TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM [redacted] 1923

No. [redacted] 181

MANUFACTURERS' LAND & IMPROVEMENT COMPANY, PLAINTIFF IN ERROR,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION AND PUBLIC SERVICE RAILWAY COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED DECEMBER 29, 1923.

(29,319)

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SUPREME COURT OF THE UNITED STATES.

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1 In the District Court of the United States, District of New Jersey.

MANUFACTURERS' LAND & IMPROVEMENT COMPANY

v.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION and Public Service Railway Company.

DOCKET ENTRIES.

Mar. 25,	1920.	Copy of Proceedings, filed.
Apr. 7,	"	Answer of Public Service Railway filed.
Apr. 13,	"	Answer of U. S. Shipping Board Emergency Fleet Corporation, filed.
June 21,	"	Reply to Answer of U. S. Shipping Board Emergency Fleet Corp., filed.
" 25,	"	Notice of trial, filed.
Nov. 1,	"	Cause placed on calendar for Sept. Term.
Jan. 17,	1921.	Cause placed on calendar for Nov. Term.
Apr. 4,	"	Cause placed on calendar for Jan. Term.
Sept. 12,	"	Cause placed on calendar for April Term.
Oct. 27,	"	Requisition for Witness, filed.

2

Oct. 27,	1921.	Subpœna ad test. issued.
Nov. 1,	"	Notice *of* Produce filed.
Oct. 25,	"	Trial.
Nov. 2,	"	Trial. Verdict for Plaintiff for $4,500.
" "	"	Verdict for Defendant by Court.
Jan. 10,	1922.	Rule for Judgment final for Defendants, with costs, filed.
" "	"	Judgment recorded.
" 17.	"	Bill of Exceptions filed.
" "	"	Rule to Show Cause why verdict should not be set aside and new trial granted filed.
Jan. 26,	"	Assignment of Errors, filed.
" "	"	Petition for Writ of Error, filed.
" "	"	Order allowing Writ of Error filed.
" "	"	Bond on Writ of Error filed.
" "	"	Writ of Error issued, copy filed.
" "	"	Citation issued.
Feb. 8,	"	Citation returned, service acknowledged, copy filed.

3 Proceeding in New Jersey Supreme Court.

SUMMONS.

[Filed March 25, 1920.]

The State of New Jersey to the United States Shipping Board Emergency Fleet Corporation, a Corporation, and Public Service Railway Company, a Corporation:

You are summoned to answer the annexed complaint of Manufacturers' Land & Improvement Company, a corporation, in an action at law in the Supreme Court. And take notice that unless you file your answer to said complaint with the clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this twenty-sixth day of February, nineteen hundred and twenty. Enoch L. Johnson, Clerk. (Seal.) Wescott & Weaver, Attorneys.

4 [Title omitted.]

COMPLAINT.

[Filed March 25, 1920.]

Plaintiff, a corporation of the State of New Jersey, having its principal office at 301 Market Street, in the city and County of Camden, and State of New Jersey, says that:

1. On May 28, 1918, plaintiff owned and possessed a lot of land in the City and County of Camden, and State of New Jersey, and described as follows:

Beginning at a point in the Easterly side of Broadway distant fifty feet Southerly from the Southeast corner of Broadway and Morgan Street, as the same has been recently widened; thence, (1) Southward along the Easterly line of Broadway one hundred and sixty-five feet to a point for a corner in said line of Broadway; thence, (2) Easterly and at right angles to Broadway five hundred feet to the line of the right-of-way of the Camden, Gloucester & Mt. Ephraim Railroad; thence, (3) Northerly along the same two hundred and fifteen feet to the Southerly line of Morgan Street, widened as aforesaid; thence, (4) Northerly along the said line of Morgan Street, as widened, four hundred feet to a point in

5 said line of Morgan Street; thence, (5) Southerly and parallel with Broadway fifty feet to a point for a corner; thence, (6) Westerly at right angles to Broadway one hundred feet to the place of beginning.

2. Defendants, on that day, wrongfully entered upon said land and dispossessed plaintiff and still keeps it out of possession, depriving it of the rents and profits.

3. Said rents and profits amount to the sum of five thousand dollars a year.

4. Plaintiff's right to the possession of said land accrued on the third day of September, eighteen hundred and seventy-four.

5. Defendant, The United States Shipping Board Emergency Fleet Corporation, is a corporation created under the laws of the District of Columbia, and defendant, Public Service Railway Company, is a corporation created under the laws of the State of New Jersey.

Plaintiff demands judgment for possession of the aforesaid premises and also the sum of twenty thousand dollars for mesne profits and damages. Wescott & Weaver, Attorneys for Plaintiff.

I hereby depute and appoint U. G. Ford to execute the within writ. Witness my hand and seal this twenty-seventh day of February, A. D. 1920. W. Penn Corson, Sheriff, by James E. Hewitt, Under-Sheriff. (Seal.)

6 Duly served the within summons and complaint February 27, A. D. 1920, on The United States Shipping Board Emergency Fleet Corporation by posting a true copy of the within writ, on the premises at Broadway and Morgan Street, City of Camden, County of Camden, New Jersey, also by mailing with postage prepaid at the Camden, New Jersey, Post Office, a true copy thereof to the President of The United States Shipping Board Emergency Fleet Corporation, Washington, D. C. W. Penn Corson, Sheriff, by U. G. Ford, Special Deputy Sheriff. Sheriff Fees, $4.14.

Duly served the within summons and complaint February 27, A. D. 1920, on the Public Service Railway Company, by delivery to and *carting* with Thomas E. Bobcock, claim agent, a true copy, at office 418 Federal Street, City of Camden, County of Camden, New Jersey. W. Penn Corson, Sheriff, by U. G. Ford, Special Deputy Sheriff.

[Endorsement omitted.]

7 [Title omitted.]

PETITION FOR REMOVAL TO UNITED STATES DISTRICT COURT.

[Filed Mar. 16, 1920.]

To the Honorable the Judges of said Court:

Now come the defendants in the above entitled cause and file their petition for the removal thereof from the Supreme Court of New Jersey, in which it is now pending, to the District Court of the

United States in and for the District of New Jersey, held in the City of Trenton, in said district and State.

Your petitioner, the United States Shipping Board Emergency Fleet Corporation, one of the said defendants, would show unto your Honorable Court:

1. That this cause was filed in your Honorable Court on the twenty-sixth day of February, 1920, and that the time to plead, answer or demur to the same has not expired under the laws of the State of New Jersey in such case made and provided.

2. That the said suit is one of a civil nature at common law and is a suit arising under the Constitution and Laws of the United States.

8 3. That the matter in dispute exceeds in value the sum of three thousand dollars ($3,000), exclusive of interests and costs.

4. That your petitioner, the said United States Shipping Board Emergency Fleet Corporation, is a corporation organized and existing under the laws of the District of Columbia and, therefore, under the laws of the United States, and was formed in pursuance of the Act of Congress approved September 7, 1916, entitled Shipping Act, 1916, its corporate object being as set forth in the eleventh section of said act,

"the purchase, construction, equipment, lease, charter, maintenance and operation of merchant vessels in the commerce of the United States";

and with respect to the matters, things and transactions set forth by the plaintiff in its complaint as the ground for recovery against your petitioner and its co-defendant, your petitioner was the delegate or deputy of the President of the United States by virtue of the Act of Congress approved April 22, 1918, and the Executive Order of the President issued in pursuance of said act on June 18, 1918.

Your petitioners herewith file a good and sufficient bond under the Act of Congress in such case made and provided, conditioned as the law directs, that they will within thirty days file a certified copy of the record of this cause in the District Court of the United States for the District of New Jersey, and pay all costs which may be awarded by said court, if said District Court shall determine that this suit was improperly or wrongfully removed thereto.

Your petitioners therefore pray your Honorable Court that it proceed no further herein except to order the removal, accept the

9 bond herewith presented, and direct a transcript of the record to be made and certified as provided by law. Joseph L. Bodine, U. S. Attorney for the District of New Jersey. Wm. M. G. Anderson, Asst. Counsel United States Shipping Board Emergency Fleet Corporation. Frank Bergen, Counsel for Public Service Railway Company.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that on this fifth day of March, 1920, personally appeared before me, a notary public in and for the District of Columbia, John Barton Payne, who being duly sworn according to law, deposes and says that he is the president of the United States Shipping Board Emergency Fleet Corporation, one of the petitioners herein; and that as such officer he is authorized to and does make this verification; and that the allegations in said petition are true to the best of his knowledge, information and belief. John Barton Payne, per W. Y. C. A.

Subscribed to and sworn before me this fifth day of March, 1920. E. J. Skidmore, Notary Public. (Seal.) My commission expires January 17, 1924.

10 STATE OF NEW JERSEY,
County of Essex, ss:

Be it remembered, that on this eleventh day of March, 1920, personally appeared before me, a notary public in and for the State of New Jersey, Edmund W. Wakelee, who being duly sworn according to law, deposes and says that he is the vice-president of the Public Service Railway Company, one of the petitioners herein; and that as such officer he is authorized to and does make this verification and that the allegations in said petition are true to the best of his knowledge, information and belief. Edmund W. Wakelee.

Subscribed to and sworn before me this 11th day of March, 1920. Kenneth W. Hallock, Notary Public of N. J. (Seal.) Commission expires 1921.

[Endorsement omitted.]

11 [Title omitted.]

BOND FOR REMOVAL.

[Filed Mar. 16, 1920.]

Know all men by these presents, that we, the United States Shipping Board Emergency Fleet Corporation, a corporation, and the Public Service Railway Company, a corporation, as principals, and the American Surety Company of New York, a corporation, organized and existing under the laws of the State of New York, as surety, are held and firmly bound unto the plaintiff in this cause, its successors and assigns, in the sum of five hundred dollars ($500), the payment of which well and truly to be made, and each of us bind ourselves and our successors jointly and severally by these presents.

Conditioned, nevertheless, that whereas the said principals have applied to the Supreme Court of New Jersey to remove the case now pending therein, wherein the Manufacturers' Land & Improvement Company, a corporation, is the plaintiff, and the United States Shipping Board Emergency Fleet Corporation, a corporation, and the Public Service Railway Company, a corporation, are the defendants, to the District Court of the United States for the
12 District of New Jersey, sitting in the City of Trenton, in said District and State, and that all further action in the said Supreme Court be stayed.

Now, therefore, if your petitioners shall enter in the District Court of the United States for the District of New Jersey within thirty (30) days a copy of the record of the said suit, as required by law, and shall pay or cause to be paid all costs that may be awarded therein by said District Court of the United States, if the said court shall hold that said suit was improperly or wrongfully removed thereto, then this obligation to be void; otherwise to be and remain in full force and virtue. United States Shipping Board Emergency Fleet Corporation, by John Barton Payne, President. Attest: John J. Flaherty, Secretary. (Seal.) Public Service Railway Company, by Edmund W. Wakelee, Vice-President. Attest: Charles M. Breder, Asst. Secretary. (Seal.) American Surety Company of New York, by Ellis L. Pierson, Resident Vice-President. Attest: Francis R. Zelley, Resident Asst. Secretary. (Seal.)

13 **AUTHORITY OF SIGNERS FOR SURETY.**

Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.

The first meeting of the Board of Trustees of the American Surety Company of New York, after the annual Stockholders' meeting, was held at the office of the Company, No. 100 Broadway, New York City, on Tuesday, January 20, 1920, at twelve o'clock noon.

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees, American Surety Company of New York.

"GENTLEMEN: The Committee appointed by the Executive Committee of this Company, at their meeting held Tuesday, December 2, 1919, for the purpose of nominating * * * Officers of the Company * * * for the ensuing year and until their successors are elected, beg leave to report as follows:

"We nominate for * * *

Place.	Resident vice-presidents.	Resident assistant secretaries.
Trenton, N. J.	Arthur H. Wood. Ellis L. Pierson. Huston Dixon.	C. A. Worthington. Francis R. Zelley.

* * * * * * *

"Whereupon, it was

"Resolved, That the Secretary be authorized to cast one ballot on behalf of the Trustees present, for the members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, Officers and Counsel, as recommended by the Nominating Committee for the ensuing year and until their successors are elected; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year and until their succes-
14 sors are elected.

"The following resolution was adopted:

"Resolved, That the Resident Vice Presidents be and they hereby are, and each of them is hereby authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by a Resident Assistant Secretary. * * *"

STATE OF NEW YORK,
County of New York, ss:

I, H. E. Ising, assistant secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts from the record book of the board of trustees of the American Surety Company of New York, with the original record of said board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said record book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the company, at the City of New York, this twenty-third day of January, 1920. H. E. Ising, Assistant Secretary.

[Endorsement omitted.]

15 [Title omitted.]

ORDER FOR REMOVAL.

[Filed Mar. 16, 1920.]

This matter being opened to the Court on behalf of the defendants, by Joseph L. Bodine, United States Attorney, upon reading the duly verified petition of the United States Shipping Board Emergency Fleet Corporation and the Public Service Railway Company, a corporation, defendants in the above matter, and upon examining the bond tendered with the said petition, the filing of same being

good and sufficient surety, and it appearing that Messrs. Wescott & Weaver, counsel for the plaintiff, had due notice of this application, it is on this sixteenth day of March, 1920, ordered that the above stated cause of action be removed by the petitioners to the United States District Court for the District of New Jersey, by the filing of a certified copy of the record of the case within thirty days from the date hereof with the clerk of the United States District Court for the District of New Jersey, and it is further ordered that no acts be done in the said cause in this court other than the acceptance of the said bond and the certification of the transcript of the record of said cause in accordance with the law. Thomas W. Trenchard, Justice Supreme Court.

16 [Endorsement omitted.]

CLERK'S CERTIFICATE.

[Filed Mar. 25, 1920.]

I, Enoch L. Johnson, clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the entire proceedings in the above stated cause as the same remain on file and of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this twenty-third day of March, A. D. nineteen hundred and twenty. Enoch L. Johnson, Clerk. [Seal.]

[Endorsement omitted.]

17 [Title omitted.]

ANSWER.

[Filed April 7, 1920.]

Public Service Railway Company, a corporation of the State of New Jersey, having its principal office at 80 Park Place, in the City of Newark, County of Essex and State of New Jersey, says that:

1. It denies the truth of the matter contained in the complaint.

2. All and every use made by it of the lands and premises or any portion thereof described in the complaint in this cause is under and by virtue of lawful authority conferred upon it by The United States Shipping Board Emergency Fleet Corporation. Frank Bergen, Attorney of Defendant, Public Service Railway Company.

18 [Title omitted.]

ANSWER.

[Filed April 13, 1920.]

The United States Shipping Board Emergency Fleet Corporation, a corporation of the District of Columbia, organized and existing in pursuance of Section 11 of the Act of Congress approved September 7, 1916, for answer to the complaint in the above entitled cause says that:

1. It admits that on May 28, 1918, the plaintiff owned and possessed a lot of land in the City and County of Camden and State of New Jersey, but avers that said lot of land is inaccurately described in the first paragraph of said complaint.

2. It denies that on May 28, 1919, it wrongfully entered upon said land and dispossessed the plaintiff and still keeps it out of possession, depriving it of the rents and profits. On the contrary, on that day this defendant, under and by virtue of the power conferred upon and vested in it by the Congress of the United
19 States by act entitled, "An act to authorize and empower the United States Shipping Board Emergency Fleet Corporation to purchase, lease, requisition, or otherwise dispose of improved or unimproved land, houses, buildings and for other purposes, approved March 1st, 1918, requisitioned a lot of land theretofore belonging to the plaintiff, situate in the City of Camden, County of Camden and in the State of New Jersey, bounded and described as follows:

"Being a parcel of land approximately two and forty-sixth hundredths of an acre, the boundary line of which is described as follows: Beginning at the point of intersection of the easterly sideline of Broadway with the proposed southerly sideline of Morgan Street and extending thence as follows (1) along the said easterly sideline of Broadway south nine degrees forty-five minutes west a distance of two hundred and fifteen feet (215'); thence (2) south eighty degrees twenty-one minutes east a distance of five hundred feet (500') to a point in the westerly boundary line of the right of way of the Camden, Gloucester and Mt. Ephraim Railroad; thence (3) along the said westerly boundary line of the right of way of the Camden, Gloucester and Mt. Ephriam Railroad north nine degrees forty-five minutes east a distance of two hundred and fifteen (215') to the said proposed southerly sideline of Morgan Street; thence (4) along the said proposed southerly sideline of Morgan Street north eighty degrees twenty-one minutes west a distance of five hundred feet (500') to the point and place of beginning in the easterly sideline of Broadway and there ending."

Said requisition was in writing duly acknowledged and was on July 1, 1918, recorded at Camden in Book M-4 of Miscellaneous Rec-

ords, page 543, et cetera, in the office of the Register of Deeds,
20 Camden County. In addition to the power conferred upon this defendant by the Act of Congress above recited, this defendant from and after June 18, 1918, had authority as the delegate or deputy of the President, with respect to the lot of land above described, to take possession, lease or assume control of any street railroad, interurban railroad, or part thereof, cars and other equipment necessary to operation; and further authority to take possession of, lease or assume control of any street railroad, interurban railroad, or part thereof, wherever operated, and all cars, appurtenances and franchises or parts thereof, commonly used in connection with the operation thereof, necessary for the transfer and transportation of employees of shipyards or plants engaged, or that may hereafter be engaged, in the construction of ships or equipment thereof, for the United States. In the matter of the requisition of the aforesaid lot of land, this defendant on November 15, 1919, made and determined as and for just compensation for the estate and interest of the plaintiff so requisitioned as aforesaid, the sum of $19,743.20, lawful money of the United States of America, which determination of just compensation was embodied in a written instrument duly acknowledged, which instrument was on March 3, 1920, recorded in Book M-5 of Miscellaneous Records, page 89, et cetera, in the office of the Register of Deeds of Camden County.

3. This defendant denies that the rents and profits of the lot of land so requisitioned, as aforesaid, amounts to the sum of five thousand dollars ($5,000) a year.

4. This defendant admits that the plaintiff's right to the possession of said land accrued on the third day of September, 1874.

5. This defendant is a corporation, all the shares of whose
21 capital stock are owned and held for and on behalf of the United States of America, and whose object is the purchase, construction, equipment, lease, charter, maintenance and operation of merchant vessels in the commerce of the United States. By reason of the aforesaid ownership of its capital stock, and by reason of its corporate object, this defendant has at all times since the date of its incorporation, to wit, April 16, 1917, been an agency, arm, branch and instrumentality of the government of the United States, and by virtue of sundry acts of Congress conferring on the President of the United States power and authority with respect to the corporate object of this defendant, which power and authority the President of the United States has, by executive orders, delegated to this defendant, this defendant has ever since July 11, 1917, been the delegate or deputy of the President of the United States. Wherefore, by virtue of the terms and provisions of the Act of Congress first above recited, approved March 1, 1918, and also by virtue of the Act of Congress approved April 22, 1918, entitled "An Act to amend the Emergency Shipping Fund Provisions of the Urgent Deficiency Appropriation Act approved June 15, 1917, so as to empower the President and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes," this defendant avers that it requisitioned

and acquired the lot of land above described, solely for the use and benefit of the United States of America, and that the present suit cannot be maintained against this defendant; on the contrary, this defendant avers the present suit is one in substance and effect against the United States of America, which can only be maintained in accordance with the provisions of the Act of Congress aforesaid,
22 approved April 22, 1918, for the purpose of obtaining from the United States such other and further compensation for the lot of land above described as the plaintiff may establish, in addition to the sum of $19,734.20 heretofore determined by this defendant to be just compensation for the requisitioning of said lot of land. Joseph L. Bodine, U. S. Attorney.

[Title omitted.]

REPLY TO ANSWER OF THE UNITED STATES SHIPPING BOARD, ETC.

[Filed June 21, 1920.]

Manufacturers' Land & Improvement Company, for reply to the answer of The United States Shipping Board, Emergency Fleet Corporation, one of the defendants in the above entitled cause, says that:

1. It denies that the lot of land referred to is inaccurately described in the complaint.

23 2. Neither on the twenty-eighth day of May, 1918, or the twenty-eighth day of May, 1919, was Manufacturers' Land & Improvement Company the owner of the parcel of land described in the second paragraph of the answer, but was the owner of only a portion thereof, the same being accurately described in the complaint. Plaintiff further denies that defendant, The United States Shipping Board, Emergency Fleet Corporation, from and after June 8, 1918, had authority, as the delegate or deputy of the President, with respect to the lot of land as set forth in said answer; and further denies that said defendant had authority or was lawfully entitled to make determination as and for just compensation for the estate and interest of the plaintiff.

3. It denies that The United States Shipping Board, Emergency Fleet Corporation has, at all times since its incorporation, been an agency, arm, branch and instrumentality of the Government of the United States.

4. Neither under the Act of Congress of the United States entitled, "An Act to authorize and empower The United States Shipping Board, Emergency Fleet Corporation to purchase, lease, requisition, or otherwise dispose of improved or unimproved land, houses, buildings and for other purposes," approved March 1, 1918, or under the Act of Congress entitled, "An Act to amend the Emergency Shipping Fund Provisions of the Urgent Deficiency Appropriation Act, approved June 15, 1917, so as to empower the President and his designated agents to take over certain transportation systems for the

transportation of shipyard and plant employees, and for other purposes," approved April 22, 1918, had the defendant, The
24 United States Shipping Board, Emergency Fleet Corporation, any authority to requisition or take possession of the land described in the complaint. Wescott & Weaver, Attorneys for Plaintiff.

Consent is given to file within reply out of time. Elmer H. Geran, U. S. Attorney.

[Title omitted.]

SUBPŒNA AD TEST.

UNITED STATES OF AMERICA:

The President of the United States of America to Clifford W. Smith or Mr. James, Secretary and Assistant Secretary, respectively, Emergency Fleet Corporation, Washington, D. C., Greeting:

You are hereby commanded, that laying aside all business and excuses, you be and appear, in your own proper person, before the District Court of the United States, for the Third Circuit, in the District of New Jersey, to be holden in the Court Rooms of said Court, United States Government and Post Office Building, at Trenton, N. J., in said District, on the second day of November, in the year of
25 our Lord one thousand nine hundred and twenty-one at ten-thirty o'clock in the forenoon of that day, to give evidence in a certain cause now pending in the said District Court of the United States, between Manufacturers' Land and Improvement Company, plaintiff, and United States Shipping Board, Emergency Fleet Corporation, defendant, in an Action at Law, and that on the part of the defendant, and this you are not to omit, under the penalty, each of you, of five hundred dollars.

Witness the Honorable John Rellstab, a Judge of said court, at Trenton, in said District, this twenty-seventh day of October, nineteen hundred and twenty-one. George T. Cranmer, Clerk, by R. S. Chevrier, Deputy. Elmer H. Geran, U. S. Attorney.

Served the within named Clifford W. Smith personally this the twenty-eighth day of October, 1921. Maurice Splain, U. S. Marshal, by Paul B. Elcan, Deputy U. S. Marshal.

26 [Title omitted.]

REQUISITION FOR WITNESSES.

[Filed October 27, 1921.]

Before District Court.

Trenton, N. J., October 27, 1921.

The clerk of the District Court of the United States, for the District of New Jersey, will please issue subpœnas in the above case for the following persons to appear before said court on the second day of November, A. D. 1921, at ten-thirty o'clock A. M., Trenton, N. J.:

Clifford W. Smith or Mr. James, secretary and assistant secretary, respectively, Emergency Fleet Corporation, Washington, D. C.
F. M. P. Pearse, Assistant United States Attorney.

27 [Title omitted.]

NOTICE TO PRODUCE.

[Filed November 1, 1921.]

To the above-named plaintiffs and to Messrs. Wescott & Weaver, attorneys for the plaintiffs:

Take notice that you are required to produce at the trial of the above entitled action the requisition of the Emergency Fleet Corporation for the land in question in this suit, which requisition was delivered to the plaintiff on or about May 28, 1918. Respectfully, Elmer H. Geran, United States Attorney, by Frederic M. P. Pearse, Assistant United States Attorney.

Service of the within notice is hereby acknowledged this twenty-ninth day of October, 1921, Wescott & Weaver, Attorneys for Plaintiff.

28 [Title omitted.]

TESTIMONY.

[Filed January 17, 1922.]

Transcript of Proceedings Taken in the Above-entitled Cause Before Hon. John Rellstab, Judge, and a Jury on Wednesday, November 2, 1921, at Ten-thirty a. m., Trenton, New Jersey.

Appearances: Francis D. Weaver, Esq., and Hon. John W. Wescott and Samuel B. Scott, Esq., for the plaintiff; Hon. Frederic M. P. Pearse and Hon. Eldred S. Jacobson for the defendants.

Mr. Pearse: I would like to introduce Mr. Jacobsen, assistant counsel for the United States Shipping Board, Emergency Fleet Corporation, who will assist in the trial of this cause. He is a member of the Bar.

Mr. Wescott: I would like to introduce Mr. Scott, of the Philadelphia Bar, who represents with us, the Manufacturers' Land & Improvement Company.

The Court: You may open whenever you are ready, gentlemen.

(Counsel for the plaintiff thereupon opened to the jury.)

29 Mr. Pearse: If your Honor please, I would like to say at the outset that the Government is bearing the burden of the defense in this case and that the Public Service Railroad Company will not appear or take part in the trial. Judge Armstrong wished me to say to your Honor that no discourtesy is intended but that the Government having undertaken the burden of defending the suit there is no necessity for the Public Service counsel to be here.

(Counsel for the defendants thereupon opened to the jury.)

Mr. Pearse: It seems to me, if the Court please, at this point based on the opening of counsel for the plaintiff that the legal proposition is almost immediately raised on the pleadings as to whether or not there was any power in the United States Shipping Board Emergency Fleet Corporation to take this land. That seems to be purely a question of law and I would respectfully suggest that that proposition perhaps be argued out first before we go into the question of the value or the rental value of this land.

Mr. Weaver has stated that the property was taken from them under a certain statute which authorizes the Shipping Board to do certain things, but that after they had taken the land they didn't use it for the purposes for which it was taken. That, of course, raises another legal proposition, and everything is before the Court on the pleadings excepting the actual language of the requisition itself. I would suggest perhaps if we go out of the usual order and offer the requisition and have it placed on the record so that your Honor may have *it* before you in determining the legal propositions it would facilitate matters.

Mr. Weaver: It seems to me, if your Honor please, we 30 might get on the record here perhaps an admission on the part of the Government that we have title to this property.

Mr. Pearse: We admit that on the record you did have title up to the time we took it.

The Court: I think you have not very much on the question of title in the requisition. When the case is ripe for ruling I will give you a ruling.

Mr. Pearse: The pleadings admit that the plaintiff owned and possessed the land described in the complaint, and then there is some little question about the accuracy of the description, but that is easily settled by a map, if you have got one.

The Court: You may stipulate what you like, but get something on the record.

Mr. Wescott: I suggest, with the permission of my friends, that we have it stipulated on the record that the plaintiff had title and possession at the time the Emergency Fleet took possession, that is settled by the pleadings, the pleadings admit we had title and possession. There is only one little point in our complaint, we set out literally the boundaries of the property that we own and possess. Sometime before the Emergency Fleet took possession of this property the plaintiff had sold a corner lot, a small lot, and the pleadings for the defense show that our description is not accurate in that respect. But so far as our ownership and occupancy of the property was concerned, the pleadings admit that and I thought it would save a lot of time——

The Court: Put your description in the record, or is it in the pleadings——

Mr. Wescott: Yes, it is in the pleadings.

The Court: They challenge that in their pleading but don't they set up a corrected description?

31 Mr. Pearse: If your Honor will look at that map I will answer that by simply saying that the requisition calls for the entire tract and includes within it a 50 foot lot on the corner, which was not at the time owned by the Manufacturers' Land & Improvement Company, and that as I see it is the only dispute there is, which makes a matter of no difference at all in the ultimate determination of the case.

Mr. Wescott: That is right. It is understood, then, that is the stipulation.

Another stipulation that might possibly be made if my friends will look upon it with favor, and that is that this land was unoccupied land at the time it was taken.

Mr. Pearse: I guess that is right.

The Court: It was unoccupied land?

Mr. Pearse: Unoccupied.

Mr. Wescott: Unoccupied land, that is stipulated.

The next stipulation—this is all in the interest of saving time, if the Court please—the next stipulation I suggest is that the Emergency Fleet Corporation after taking possession of this unoccupied land never built any houses on it for any purpose whatsoever but did turn it over to the Public Service Corporation of this State and that that Public Service Corporation then turned a portion of this land into a terminal for its own use. I suppose that can be stipulated.

Mr. Pearse: No, we cannot stipulate that because we don't consider that is material to the issue at all. If we had the right to take it what happened afterwards is not material or relevant to this issue.

Mr. Wescott: Then your answer to that is——

The Court: So long as you don't agree I can't entertain it.

Mr. Wescott: As the situation is now before us by the stipulations

agreed to constituting part of the record, we conceive that
32 the orderly course of the proceedings would be to adduce our proof as to damages, I mean profits, and proof as to what was done by the defendants with this piece of land. Then after that is done, then will come the legal fight; that is to say, your Honor will then have to determine whether or not the Emergency Fleet had any right at all to take this land, first; secondly, whether the use that it was put to either by the Emergency Fleet Corporation or by the Public Service was a use which they had a right to put it to and which would justify their taking our property. Those are questions that your Honor has got to decide, and if you decide them favorably to us then the jury will pass necessarily upon the damage element, the element of damage. If you should find against us then the jury would be excused of course from finding damages. Isn't that perfectly plain?

Mr. Pearse: Yes, sir, except there is one thing that has been omitted, and I think we can all stipulate into the record the requisition under which the land was taken, and if we get that in you immediately raise the legal proposition.

Mr. Wescott: Yes. Admit the document.

The Court: Let the document appear then.

Mr. Pearse: That will be offered as an exhibit.

(Paper received in evidence and marked Exhibit G-1.)

Mr. Pearse: Also the award which was made under the proceedings by which this land was taken.

Mr. Wescott: We stipulate that that is the document under which the Government proceeded.

The Court: It is stipulated this is the requisition and this is the award?

Mr. Wescott: Yes. The legal effect of it is, of course, another question.

33 (Paper referred to received in evidence and marked Exhibit G-2.)

Mr. Wescott: You won't admit any fact except the land was unoccupied?

Mr. Pearse: Except that the land was taken, yes, and unoccupied, yes, at the time of the taking.

Mr. Wescott: I will call Mr. Chew. My attention has been called to the unfortunate use of a word. Instead of unoccupied land, I meant unimproved land.

Mr. Pearse: We all understand that.

DAVID S. B. CHEW, a witness produced on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination.

By Mr. Wescott:

Q. Where do you live?
A. Nineteen South Twenty-first Street, Philadelphia.
Q. And what is your relation to the plaintiff in this case?
A. I am president of the corporation.
Q. And have been for how long?
A. Over eight, nine years.
Q. Are you personally familiar with the land in question in this case?
A. Yes, sir.
Q. And have been for how many years?
A. Thirty—forty years.
Q. On May 28th, 1918, when the Emergency Fleet Corporation took this land, was it occupied or unoccupied land?
A. It was unoccupied.
34 Q. Were there any buildings or houses of any sort on it?
A. Only a stand; a small stand.
Q. What do you mean by small stand?
A. Grandstand for games.
Q. A baseball stand?
A. Yes.
Q. Did you put that there?
A. No.
Q. How big an institution was that?
A. I presume it was about 30 feet long.
Q. A little trifling stand that the boys had put up?
A. Yes.
Q. You had nothing to do with that?
A. No, sir.
Q. Aside from that there were no buildings on it at all?
A. No, sir.
Q. Any railroad tracks on it?
A. No, sir.

The Court: Was it fenced in?
The Witness: No, sir.

Q. After the Emergency Fleet——

Mr. Pearse: Why not get the location while this gentleman is here?

The Court: Give a general location.

Q. Yes. Mr. Chew, tell his Honor and the jury, if you please, where that land is located?

A. It was the southeast corner of Broadway and Morgan Street. Broadway is the principal artery of the city of Camden, and on the

opposite side of Broadway was the plant of the New York Shipbuilding Corporation, which is the largest and most important shipbuilding corporation in the world. On the opposite side of Morgan Street, which was a wide thoroughfare, extending eastward from
35 Broadway to the York Ship Village, was the principal offices of the New York Shipbuilding Corporation, with large, attractive grounds about it.

Q. How is that?

A. With large grounds about it.

Q. About it?

A. Yes, about the New York Shipbuilding.

Q. Mr. Chew, I show you a map; will you look at it, please, and see whether that correctly represents the locality and if you can point it out on that map (handing map to witness)?

A. Yes, sir; here it is (indicating).

Mr. Pearse: You see that mark "A" there at the corner?

The Witness: Yes; "A" is the tract in question. "D" is the location of the United States Government building, and then right across the way is the New York Shipbuilding Company offices and half a square away is the Fairview station on the West Shore Railroad and also the Reading system.

Q. How big a tract is it, your tract?

A. It is something over 75, about 75,000 square feet, over 75,000, 105,000 square feet.

The Court: 105,000?

The Witness: Yes, 105,000 square feet.

Q. Is this map correctly representative of the locality, the surroundings?

A. It is except that it don't show all the buildings. This map was made in 1903, I think, about 1903, and doesn't represent all the buildings which have been erected since.

Mr. Wescott: Is there any objection to the admission of this, Mr. Scott?

Mr. Scott: No.

Mr. Wescott: All right, then, with your Honor's permis-
36 sion and if you are satisfied, we will have this admitted and marked as plaintiff's exhibit No. 1.

(Map received in evidence and marked "Exhibit P-1.")

A. (Continuing:) Broadway, which runs in front of this property, is 66 feet wide, with a double track trolley and asphalt pavement. Morgan Street was some 80 feet wide and has been paved with asphalt pavement, and has improvements in it.

Q. Have there ever been any buildings constructed, erected on this land of yours since the Government took possession of it?

Mr. Jacobsen: Objected to on the grounds it is entirely incompetent, irrelevant and immaterial.

The Court: It does not seem to be material unless you want to raise a legal question on it. The question is whether they had power to take it.

(After argument.)

The Court: If it is not important it does not make any difference. However, I am going to allow it and you may take an exception.

Mr. Jacobsen: Exception.

(Exception allowed.)

Q. Have there been any buildings of any sort erected or constructed on this land since the Government took possession of it?

A. No buildings except a fence on three sides of it, tracks, platforms and shed over a portion of the platforms.

Q. What has been put on this land since the Government took it?

A. There have been——

Mr. Jacobsen: Objected to. The same objection.

The Court: You have the same exception.

37 A. There has been a loop for trolleys and a platform, two platforms, and a little watchman's house, or ticket house, and fence, rails, and then it has been used for the parking of automobiles and trucks.

Q. And that has been the sole use?

A. And for storage of cars.

Q. That has been the sole use to which this land has been put since it was taken?

A. Yes, sir.

Q. Who is it that uses these trolley tracks and this shed and fence?

Mr. Pearse: Objected to; that also is immaterial as to the uses.

The Court: I think so, too, but I am going to allow the evidence to be put in.

Mr. Pearse: Exception.

The Court: Yes.

(Exception allowed.)

Mr. Wescott: They have raised that in their pleadings.

Q. Answer the question.

A. The Public Service Corporation, the jitney buses and visitors to the plant of the New York Shipbuilding Company and their employees, the employees and officers of the New York Shipbuilding Company.

Q. How do they use it?

A. They use it by putting their cars, parking their cars and the trucks for the jitney buses and also the Public Service Corporation, they store their cars there and use it as a loading platform.

Cross-examination.

By Mr. Jacobsen:

Q. Mr. Chew, will you look at this map, please, P-1; you say that the plant of the New York Shipbuilding Corporation is where
38 relative to the land which is in question; just use the compass, will you, please?

A. What is the question?

Q. You said that the plant of the New York Shipbuilding Company was located near the land which was taken; just how near was it and what position is it to the land which was taken?

A. The plant of the New York Shipbuilding Company is located on the west side of Broadway, 66 feet away from this land.

Q. That land on which the plant of the New York Shipbuilding Company is then abuts right on the water, does it?

A. It runs from the exterior of the wharf line back to Broadway, the plant.

Q. From that land to the west of it you said the plant of the New York Shipbuilding Company was, is that right?

A. Yes, sir.

Q. To the east of that land what is located there, Mr. Chew?

The Court: East is here and west here (indicating).

The Witness: Yes; this is east and this is west.

A. The land occupied by the Gloucester and Blackwood branch of the Atlantic City Railroad Company.

Q. You spoke a moment ago of the Fairview Realty Company?

A. What?

Q. Just where is that Fairview Realty Company located with reference to this plot of land?

A. A part of the Fairview Realty Company is located within some 600 feet of it, 6 or 700 feet.

Q. As a matter of fact, Mr. Chew, can you state whether
39 or not this Fairview Realty property surrounds this piece of land or not?

A. It does not surround it exactly. They have some 200 lots on the north side of Morgan Street beginning about 600 feet from this property; then they have acquired land on the south side of Morgan Street about a thousand feet away, I should think, and laid out a boulevard through Secretary of the Treasury Mellon's property——

Q. Don't mind that, please.

A. Well, you want the information and I am going to give it to you.

Q. All right.

A. Over a quarter of a mile to what used to be called the York Ship Village. I believe its name has been changed to Fairview now, and where the Government has put in $13,500,000.

The Court: Don't go into details.

Q. Viewing that property by and large, you would say that the Fairview Realty Company property and the development is immediately contiguous to it, isn't that so?

A. Not contiguous, it is adjacent.

A. And within a distance of approximately 600 feet from it?

A. Yes sir; starts——

Q. You spoke about the Gloucester Shipyard; how far from the piece of land is the Gloucester Shipyard?

A. The Gloucester is about 1,800 feet; less than 1,800 feet.

Q. So that as far as this property is located within a minimum distance of 600 feet on one side and a distance of 1,800 feet on the other, it is in a measure between two shipyards and surrounded by a housing development; in a general way is that not the description of the property?

40 A. Well, it is in the City of Camden, at the intersection of two of the principal thoroughfares.

Q. And on one side of it is the New York Shipbuilding Company, is that correct?

A. Yes, sir.

Q. On the other side is the Gloucester?

A. Yes.

Q. And right around that, between the two, is what you call the Fairview Realty Company?

A. Oh, there is land of this company intervening.

Q. Yes, we understand, Mr. Chew, I don't mean every little piece of land. You were talking about the Fairview Realty Company; do you know what that is?

A. The Fairview Realty Company?

Q. Yes.

A. It is incorporated under the laws of the State of New Jersey, I believe.

Q. You spoke about $13,000,000 being spent for building houses there, did you?

A. Yes.

Q. Do you know who spent that money?

A. The New York Shipbuilding Company spent part of it, I believe, $200,000 or $300,000, at least. $100,000 there, and, according to the pr-ss, the Emergency Fleet put in some other money.

Q. So that this housing development was built, as you understand it, by contributions from the New York Shipbuilding Company and the Emergency Fleet Corporation, the bulk of the money, is that correct?

A. Yes, sir.

Q. How long have you been an officer of the Manufacturers' Land & Improvement Company, Mr. Chew?

A. I have been president about eight or nine years.

Q. You are familiar with this land during all the eight or nine years you were president?

41 A. Yes, sir.

Q. And the general condition surrounding the land?

A. Yes, sir.

Q. Before the Fairview Realty Housing development was built were there any houses there?

A. Not on that tract which they purchased.

Q. In other words, where the Fairview Realty development now is there were not until the building of the houses of the Fairview Realty Company any houses before; is that correct?

A. You are speaking of two operations; the York Ship Village was across the creek.

Q. No, I am speaking——

Mr. Jacobsen: I ask to have that stricken out.

A. From the south side of Newtown Creek in Westmont Township was a piece of farm which they paid a high price for and spent a great deal of money developing, which was very unwise.

Q. As a matter of fact, Mr. Chew, wasn't this Fairview Realty Development and all these houses which comprise it built after the war, during the war?

A. It was completed after the war.

Q. And it was started during the time we were in the war, is that correct?

A. Yes.

Q. Until those houses of the Fairview Realty Company were built there never was any such development of that property as there then was, is that correct?

A. No, there have been several other companies operating in that vicinity.

Q. Let us be frank with each other. Isn't it a fact that this Fairview Realty development was within your own knowledge
42 erected as a necessary result of the war, and the demands of the United States Shipyard and the New York Shipyard for housing for their employees?

A. That was the idea of it, but it was not very practically carried out.

Q. But that was the idea, was it?

A. Yes, that was the intention.

Mr. Wescott: If your Honor please, the only evidence we have left is on the damage done the plaintiff by the taking of this property. Shall we go on with that, or do you want to settle the legal proposition whether the Government had the right to take the property?

The Court: How many witnesses have you on that?

Mr. Wescott: Only one.

The Court: I will take it.

RALPH D. BAKER, a witness produced on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination.

By Mr. Weaver:

Q. Where do you live, Mr. Baker?
A. Camden, New Jersey.
Q. What business are you engaged in?
A. Real Estate.
Q. For what period of time?
A. I am continuing the business established by my father in 1890 and I have active charge since 1910 and associated myself in the business in 1903.
Q. I will read you the description of this property, a piece of land "Beginning at a point in the easterly side of Broadway, distant fifty feet southerly from the southeast corner of Broadway and
43 Morgan Street, as the same has been recently widened; thence, (1) southward along the easterly line of Broadway one hundred and sixty-five feet to a point for a corner in said line of Broadway; thence (2) easterly and at right angles to Broadway five hundred feet to the line of the right-of-way of the Camden, Gloucester & St. Ephraim Railroad; thence, (3) northerly along the same two hundred and fifteen feet to the southerly line of Morgan Street, widened as aforesaid; thence, (4) northerly along the said line of Morgan Street, as widened, four hundred feet to a point in said line of Morgan Street; thence, (5) southerly and parallel with Broadway fifty feet to a point for a corner, thence (6) westerly at right angles to Broadway one hundred feet to the place of beginning." Are you familiar with that piece of land as I have described it?
A. I am.
Q. Have you been on the land?
A. I have.
Q. Have you bought and sold land in that vicinity?
A. I have.
Q. Have you represented others who bought and sold land in that vicinity?
A. I have.
Q. Are you familiar with values of property of the same character as the piece of land just described?
A. I am.
Q. Have you leased land for others or for yourself, land of a similar quality?
A. I have.
Q. Similar nature. And how many pieces of land?
A. I have two existing leases of vacant land of a similar nature.

Mr. Pearse: In this vicinity?

The Witness: I will specify on cross-examination where
44 they are exactly located, if you like, or I will put it in here if you want me to.

Q. How near are they located to this piece of land?
A. One piece is Sixth and Everitt Street in Camden, a piece of vacant land leased to Young & Metzner Company for the drying of bags.
Q. How far is that from this location?
A. That is in the 1400, between the 1400 and 1500 block and Sixth Street is one street *of* east of Broadway.
Q. What block is this piece of land in?
A. This is in the 2100 or 2200 block on Broadway; I know the exact location but not the number.

Mr. Jacobsen: I ask to have the last answer of the witness stricken out as not being responsive. I submit it offers no information to the jury as to the relative position of these two tracts of land.
The Court: I will permit it.
Mr. Jacobsen: Exception.
The Court: You may have it.
(Exception Allowed.)

Q. What other piece of land have you leased in this vicinity?
A. I leased to the Corrugated Board Company of Buffalo, New York, 45 by 225 feet upon which they have erected their warehouse in Camden, N. J., and that is situated at 1157 South Front Street. South Front Street in Camden, is at Cain Avenue, known as Cain Point ferry. It would be not over one mile and two-tenths from the site in question.
Q. Are you familiar with the surroundings of this piece of land of which the description has just been read to you?
A. I am.
Q. You know the character and kind of improvements that surround this property?
45 A. I do.
Q. Mr. Baker, in your judgment what would the rental value of this land stand for one year or for the years commencing May 28, 1918, to the present time?

Mr. Jacobsen: Objected to, if your Honor please, on the ground that any proof of rental value or mean profits of this land can only be introduced as a part of the just compensation provided for by the statute under which this land was taken; and upon the further ground that any such testimony is improper in any other proceeding than one brought in accordance with the statute under which this land was taken.
The Court: I understand your point. I will allow the testimony to be taken. You may have an exception.
Mr. Jacobsen: Exception.
(Exception Allowed.)

A. For the remnant from May 28, 1918, during that year and during 1919, I calculate the rental value at $4,100.

Q. Per annum?

A. Per annum during 1920, and whatever time they may be in possession at 1921, $4,163.85 per annum.

Cross-examination.

By Mr. Pearse:

Q. How do you base that calculation that you have just made?

A. Taxes and interest on the investment. I have not been given the opportunity to prove value, but I have placed it on my own valuation of the property, the land.

Q. Now, you say that your knowledge whereby you are in a position to fix a rental value for this land is based on the experience you had in renting properties in this vicinity. I have heard you describe two but I couldn't quite gather where they were located.

46

A. South Front Street.

Q. Your answer is as to the first piece?

A. The second piece I refer to.

Q. The second piece you refer to is something over a mile from the land in question?

A. Correct.

Q. Where is the other piece?

A. Sixth and Everitt Streets.

Q. That is how far away from this property?

A. Three-quarters of a mile.

Q. These figures which you have given of $4,100 and $4,163 are they based upon your opinion, which was a result of renting these other two pieces of property or are those figures based upon what you consider to be the value of the land as a basis and a reasonable allowance for taxes and interest?

A. Upon the value of the land on reasonable interest and the taxes as levied by the City of Camden, New Jersey.

A. And therefore the experience which you have had in renting these other two properties has nothing to do with the figures which you have given here as the reasonable rental value of this property?

A. They are on the same basis value, reasonable interest, taxes.

Q. And without your opinion as to the value of this land you are in no position to say what the reasonable rental value is worth, is that right?

A. No man can say without knowing a value of a piece of land what revenue it should return.

Q. Then your answer means, does it not, that there is no particular demand for land of this kind upon which a basis of rental value could be formed other than on the general value of the land?

47 A. I could rent it at the prices I have stipulated, the same piece of land in question.

Q. It is your opinion you could rent it?

A. I could rent it.

Q. Is your opinion as to the rental value of this land and as to its value in any way affected by the so-called Fairview development in the vicinity?

A. To a degree, but a slight degree.

Q. Will you explain what you mean by that?

A. Traffic and acces-ibility improve any property. The mere effect of an automobile passing a store location has its advertising value. There are shopping districts in the center of Fairview today and a person riding by in the bus might or might not get off at this particular point to make a purchase.

Q. That means then that in your opinion the value of this land has gone up because of the general development in the neighborhood?

A. Surely.

Q. And your opinion, therefore, as to the rental value is based upon that increased value of the cost of this improvement?

A. Yes, and were I to lease that property I would sell it by meter rates for future increment which will accrue to it.

Q. In estimating the rental value of the land what did you have in mind with respect to the uses to which this property would be put?

A. In subdividing for purpose of valuation for commercial purposes on the Broadway front, Morgan Street front and the rear portion from industrial standpoints?

Q. Factories and the like, what do you mean?

A. Same as I referred to, sir, that I have rented the Corrugated Board Company and for the drying of bags. We have certain storage at the present time on vacant lots for barrels.

48 Q. What do you mean by commercial purposes?

A. Any commercial district may be either retail or wholesale and by virtue of the large number of persons employed in this vicinity there is a certain value accruing from the needs and requirements of the people who are employed in the New York Shipbuilding Corporation.

Q. In other words, for the renting of land for the purposes of putting up buildings on it, is that the idea?

A. Absolutely. I might refer to the piece on the Market Street walk in Camden.

Q. On the what?

A. Market Street walk in Camden leading from the Federal Street ferries where the Pennsylvania Railroad leases land, and they have erected, the tenants have erected their own stores. A similar condition could be very favorably developed at this point.

Q. All caused by the increase in the business done at the shipping plant because of the war?

A. Yes.

Mr. Jacobsen: That is all.

Mr. Wescott: We rest.

Mr. Jacobsen: If your Honor please, we move to dismiss on the ground first, that the pleadings in the case show clearly and without any dispute that this land in question is part of a tract of land as shown on this map requisitioned by the United States Shipping Board Emergency Fleet Corporation, under the authority of the Act of Congres of March 1, 1918, 40 Statutes, page 438.

* * * * * * *

Your Honor, of course, will take judicial notice of the existence of the Emergency Fleet Corporation as being a corporation organized under the Shipping Act of 1916 for the purposes made perfectly plain in that statute.

49 Now, the point is made by Judge Wescott that this land must be taken in accordance with the statute and for the purposes stated in the statute. The language of that satute is to purchase, lease, requisition, and so on, any improved or unimproved land or interest therein suitable for the construction thereon—we submit, if your Honor please——

The Court: Which act are you referring to now?

Mr. Jacobsen: 40 Statutes, 438, Act of March 1, 1918, paragraph "A."

Now, the word "suitable" we respectfully submit that the use of that word does not have the narrow and restricted meaning which my friends on the other side would care to give it. If the Emergency Fleet Corporation in the exercise of that power granted to it by this act decided any tract of land anywhere were suitable for the purpose of building houses, that in itself gave it then and there the right to take that land in accordance with the provisions of the statute. There was thus delegated to the Fleet Corporation the right to exercise its discretion as to whether or not this land was suitable.

* * * * * * *

Now, by any possible construction of this statute it therefore appears that there was a proper taking of this land for the purposes provided in the statute and a proper use of that land after such taking, and I say a higher use, although that is entirely immaterial because the right to take the property is not in any sense dependent on the use to which that property was taken.

* * * * * * *

50 Let us pass that for a moment and I ask your Honor to refer to 40 statutes, page 535. That was an amendment to the Emergency Shipping fund provision of the Urgent Deficiencies Act, 40 Statutes, 182 (reads section F).

On the 18th of June, 1918, the President of the United States in accordance with the power delegated to him under that statute

issued an executive order delegating to the Emergency Fleet Corporation——

The Court: Do you want to put this in evidence?

Mr. Jacobsen: I will. Delegating to the Emergency Fleet Corporation the very powers which had been given to him there.

I am going to offer this in evidence on behalf of the defendant, Executive Order 9640, duly certified by the then Secretary of State.

(Paper received in evidence and marked Exhibit G-3.)

Mr. Jacobsen: That is a direct delegation to the Fleet Corporation of the specific powers therein given to the President under that Act, which amended the Urgent Deficiencies Act.

Then, after various other powers had been delegated to the President and to the Fleet Corporation some to the Shipping Board and in all this explanation of the governmental activities your Honor is probably aware of the fact that some consolidation of these executive orders was necessary, and the President on the 3rd of December, 1918, issued another executive order which collected, as you might say, all the loose ends, delegating further to the Emergency Fleet Corporation certain powers in connection with these powers of building ships and building houses to house shipyard em-
51 ployees and taking care of the transportation of the employees to and from their homes and the shipyard.

I offer that in evidence, that executive order.

(Paper received in evidence and marked Exhibit G-4.)

Mr. Wescott: Why do you want to offer that in evidence? Your case is not open yet.

Mr. Jacobsen: It is on my motion.

Now, we submit it is entirely immaterial to what use this land was put after it had been taken, providing it was properly taken.

* * * * * * *

We submit that the case should be dismissed. It is brought first against improper party defendant and, secondly, because the remedy of the plaintiff is provided by statute, and that has not been followed.

(After agument.)

The Court: The question I am getting at is as to the jurisdiction of the Court over this Fleet Corporation in a suit of this character where it undoubtedly was an arm of the Government in exercising the power of eminent domain. * * *

The Court: Your interpretation of subdivision F here of the Act of April 22d is, you would have a perfect right within the proper understanding of that delegated power to contract with an existing railway in the neighborhood to extend its lines over this land?

Mr. Jacobsen: Unquestionably.

The Court: In other words, you furnish them with the land that they may extend their facilities for carrying out your provisions.

Mr. Jacobsen: Yes. Please don't restrict me too much to
52 just that clause, because I want that clause taken in connection with B.

The Court: Of course, you are entitled to that. But without F you still think you would have had power under B?

Mr. Jacobsen: Unquestionably.

(A recess was here taken until 1.45 P. M.

After recess.

(Continuation of argument.)

* * * * * * *

The Court: Why don't you put these things in the record? Why don't you establish these things?

Mr. Jacobsen: This is a motion to dismiss.

The Court: Yes, it is a motion, of course, but do you intend to go on with the case after the motion is determined? I assumed you were trying to prejudge the situation by not going into these matters.

Mr. Jacobsen: Certainly that is entirely the notion of the defense in this case that this action is improperly laid and therefore we are entitled to our dismissal.

The Court: I have had too many years of experience on the bench not to take the course which will bring the case to a finality whether I am right or wrong. In this case, if I should direct that the action is improperly laid and it goes to the Court of Appeals and they hold I am in error, then the case has to come all the way back again, and then we have to retry it, whereas if I get both the contentions in here now and the facts underlying those contentions and I then make a ruling, it goes to the Court of Appeals, and if they say I am in error, they have all the facts before them
53 and then can pronounce a judgment which is a final one.

Mr. Jacobsen: I think the facts are pretty well conceded in this case, that the land was taken, that no houses were built upon it and that a trolley loop was built upon it.

The Court: It is not in the case that you paid for the construction of this which you have just asserted.

Mr. Jacobsen: Of course, that is a matter of record.

The Court: It must go in this record. What records you may have is a different proposition.

Mr. Jacobsen: We are not prepared to go into that as a matter of proof at all.

The Court: Why?

Mr. Pearse: We didn't expect that question was going to arise, under the pleadings.

The Court: It is under my ruling; I don't propose this case shall be tried before a different set of jurors, term after term. It is as much the business of the Government to lay its cards on the table before us as it is for the plaintiff.

Mr. Pearse: Well, if the Court please, so far as——

The Court: It is no justification for the Government to try to take snap judgment against the plaintiff.

Mr. Pearse: There was no intention to do that at all. It seemed to the Government that, outside of the question of what the reasonable rental value of this property was, that the remaining questions were all raised in the pleadings by the simple introduction of the requisition and the award made by the board. As to whether or not the Emergency Fleet Corporation actually paid for the
51 construction of this track, or whether it was paid for by the Public Service, it didn't seem to us to be a fact which would ever come into this case as being relevant.

The Court: That is because you took a certain interpretation of the statute, that is being questioned here, and I want to frame the issues in such a way that, regardless of who may be right when the last court has spoken upon the subject, there can be a definite judgment.

Mr. Pearse: I didn't want your Honor to think we were coming here half prepared. We thought we had prepared everything necessary.

The Court: You are not prepared to meet this question.

Mr. Pearse: Because we didn't suppose it would be raised.

The Court: That is because you had a certain interpretation of it.

Mr. Jacobsen: The question was practically stipulated by counsel this morning when they stated the property could be used for the building of houses.

The Court: That is your view of it; you think that settles the question. To my mind, if my doubt should eventually resolve against you and they be correct, that would have been removed by the introduction of evidence showing that though it was turned over to the trolley company, and though they constructed the road, it was in fact paid for by the Fleet Corporation. That would be almost within the extending of the line.

Mr. Jacobsen: You see, if your Honor please——

The Court: You are not required to take a pick and shovel
55 in your own hands and construct or extend a railroad; you may ask the railway company to do that for you, and now you are intimating that was actually done.

Mr. Jacobsen: Now, of course, as far as going into the records to find out what actually was done, that has not been gone into, but I know, as a matter of fact, although I have not prepared it for this case, that the arrangement was made between the Fleet Corporation and the Public Service Corporation to furnish these transportation facilities; but we say this, that the pleadings don't put us to issue at all as to what use we made of this property; therefore we never were prepared to take that side of the case at all. The pleadings simply raise the issue and place the burden upon us to show we had a right to do that which we did do. There can be no other issues heard before the Court than those raised by the pleadings.

The Court: That is all right if your contention is the true one. Suppose I adopt it and it goes to the higher court, and they hold that it is an incorrect determination of this case, then you come all the way back again to thrash it out, whereas it could be thrashed out here now.

Mr. Pearse: A very simple answer to your Honor's suggestion is this, that if it is the duty of them to introduce this evidence, it can very easily be introduced, and if your Honor feels we are not, as you say, laying our whole hand on the table, and that this evidence should be before the Court, it can be produced inside of twenty-four hours' notice as to what the actual facts are concerning the laying of this track.

The Court: Very well, there is no disposition to prevent
56 you from doing it, even if it takes twenty-four hours. I have my own view of the case, but my view may be incorrect, and it is my business here to shape not only the issues but the incidental questions that arise under the issues in such a way there will be no failure of justice when the case goes up. Perhaps the other side will concede what you think you can prove on the morrow, because I understand your position would not be changed a particle even if he did introduce that evidence. Perhaps you can get together and save our coming back twice.

* * * * * * *

The Court: I understand your position well enough on that point, but to my mind, it is better analyzed by saying that you had a right to take this land for any one of the purposes found in any one of these Acts and that you were not required to state in your requisition to what particular of those purposes you took it.

Mr. Jacobsen: Yes, but if your Honor please, there is this practical difficulty about your Honor's suggestion, and that is this, that the powers which the Fleet Corporation exercised under 40 Statutes 182 and 40 Statutes 535 and 40 Statutes 1028, which all apply to the same thing, are one kind of power, they were powers delegated to the President of the United States, and by the President delegated to the Fleet Corporation. Now, then, the power under which we took this land was a power delegated under 40 Statutes 438, directly delegated to the Fleet Corporation so that we could not in this requisition say that the Fleet Corporation took this land by virtue of the Act of March 1, 1918, and by virtue of the Act of April 22, 1918, because the power was not given to us under both of those Acts, it was only under one of them.

57 The Court: You claim you were the deputy of the President?

Mr. Pearse: Later.

Mr. Jacobsen: After the taking of the land we claim we were. At the time we took the land we had the right to take it by virtue of statute, and after we had it we used it by virtue of power delegated to us by the President. Those are the actual facts; in other words, we took this land under a direct power delegated to us.

The Court: I understand, a direction through legislation.

Mr. Jacobsen: We used it——

The Court: Under direction of the Executive. I wonder if that sufficiently appears in the record of this case?

Mr. Jacobsen: It does by the pleading.

The Court: The pleadings present an issue. They replied to your answer.

Mr. Jacobsen: Of course, your Honor will take judicial notice of the Acts of Congress, and we offer those in evidence

The Court: I take judicial notice of Acts of Congress without their being put in evidence. I will take notice of the Executive action when it is put in evidence.

Mr. Jacobsen: It is in evidence.

The Court: That relates to the delegating of powers by the Executive?

Mr. Jacobsen: Yes. Your Honor will take judicial notice of 40 Statutes, 438, and 40 Statutes, 182, as amended by 535, and subsequently amended by——

The Court: I still think it would be better on your part to put in evidence of what was done between you and the board. The Public Service are in this trial the same as you are.

58 Mr. Pearse: So far as that is concerned, carrying out your Honor's views in the matter, I would ask for a continuance until tomorrow morning, to give us the opportunity of producing proper witnesses who can testify as to the facts.

The Court: You are entitled to that, provided the other side will not stipulate it.

Mr. Pearse: The only stipulation we want is that this road was an extension of the Public Service line already laid and that it was paid for by the Emergency Fleet Corporation.

The Court: If the other side can concede that we can go on now.

Mr. Weaver: We don't know that fact.

The Court: This matter, then, will have to go over until tomorrow. Is there anything else that ought to be thrashed out before we take a recess?

Mr. Pearse: There is one other fact we are prepared to prove, and that is by the Assistant Secretary of the United States Shipping Board Emergency Fleet Corporation that all the stock of the Emergency Fleet Corporation is owned by the United States Shipping Board.

Mr. Weaver: Is it a fact there are a number of shares held by trustees?

Mr. Jacobsen: Qualifying.

Mr. Weaver: Isn't it a fact seven or eight shares of the Shipping Board are held by individuals and the Government holds the rest?

Mr. Pearse: The motion to non-suit is in abeyance, and in order to expedite the cause we will start with our defense.

The Court: All right.

Mr. Pearse: And renew our motion——

The Court: —for direction of verdict later.

59 CLIFFORD W. SMITH, a witness called on behalf of the defendant-, being duly sworn, testified as follows:

Direct examination.

By Mr. Jacobsen:

Q. Mr. Smith, you are secretary of the United States Shipping Board?
A. I am.
Q. And of the United States Shipping Board Emergency Fleet Corporation?
A. I am.
Q. Are you as such secretary custodian of the stock book of the Emergency Fleet Corporation?
A. I am.
Q. Have you that stock book with you?
A. I have.
Q. What is the capital of the corporation?
A. Fifty million dollars.
Q. At the time of the incorporation, how many shares were there?
A. Five hundred thousand shares.
Q. Those shares are held by whom, Mr. Smith?
A. Four hundred and ninety-nine thousand nine hundred and ninety-three are held by the United States Shipping Board for the United States of America.
Q. And that is under what authority, Mr. Smith?
A. Under authority of the Shipping Act of 1916, Section 11, I think.
Q. And the remaining seven shares, by whom are they held?
A. They are held by the seven trustees of the Shipping Board, the Shipping Board Emergency Fleet Corporation to assign in blank to the United States Shipping Board on behalf of the United States of America.
Q. As to those seven shares of stock, Mr. Smith, have the trustees paid for them?
A. No, sir.
60 Q. They are merely held to qualify each trustee in order to vote as a director of the corporation?
A. They are placed in the name of the trustee by direction of the United States Shipping Board in order to qualify him to be a trustee.
Q. When a trustee resigns or is removed or his office is vacated, what becomes of that share of stock?
A. It reverts to the United States Shipping Board.
Q. What becomes of it?
A. The United States Shipping Board directs that it be transferred to the duly qualified trustee.
Q. Now, Mr. Smith, the funds by which these original shares of stock were purchased, from where did they come?
A. I think under Section 13 of the Shipping Act they came from

the sale of Panama Canal bonds by the Treasury of the United States.

Q. And all funds which have been used by the Emergency Fleet Corporation for paying for property which it commandeered and ships it requisitioned and for other things it requisitioned and materials and supplies it purchased, from where did that money come?

A. From the Treasury of the United States, by appropriations from the Congress, except the original $50,000,000, which came to the Shipping Board, except for some income derived from the operation of Government ships.

Q. Which, as a matter of fact, is a revolving fund?

A. I believe so.

Q. Under the Act of Congress?

A. I believe so.

Cross-examination.

By Mr. Weaver:

Q. The shares of stock held by these trustees—haven't the trustees full control over the shares while the stock is in their name?

61 A. No, sir; they have not, because they are assigned in blank on the day they become trustees and the date can be filled in at any time. The shares are never removed from the stock book. No share has ever been removed from the stock book.

Q. They are not permitted to hold the stock?

A. They don't actually hold it, no, sir.

Q. Could they assign it to anyone else?

A. No, sir, because it is already assigned in blank by them.

Q. Hasn't the Shipping Board a large fund from the operation of ships?

A. The Shipping Board?

Q. Yes.

A. The Shipping Board controls the funds of the Emergency Fleet Corporation; yes, sir.

Q. And those funds are used for the operation of the Shipping Board and the Emergency Fleet Corporation?

A. They are separate funds for the two organizations. The Congress provides money to the United States Shipping Board for the use of the United States Shipping Board Emergency Fleet Corporation, and by direction of the Chairman of the United States Shipping Board that money is from time to time allocated for the necessary expenses of the United States Shipping Board Emergency Fleet Corporation.

Q. The United States Shipping Board Emergency Fleet Corporation is a corporation under the laws of the District of Columbia, is it not?

A. Yes, sir.

Q. And how, then, do you differentiate the funds between the Shipping Board and the Emergency Fleet Corporation?

A. They are made by separate appropriations.

Q. Yes, but the Shipping Board, that is the United States
62 Shipping Board Emergency Fleet Corporation, builds ships and operates them, doesn't it?

A. It doesn't directly operate any ships, no, sir; it does by agent.

Q. Well, by agents?

A. It is charged with the operation of the fleet.

Q. Agents of the United States Shipping Board Emergency Fleet Corporation?

A. Yes, sir.

By the Court:

Q. This award that was made in this case for nineteen thousand-odd dollars, out of what fund would that be paid?

A. It would be paid from the so-called deficiencies appropriation of the Congress.

Q. Not by any fund turned over to the Shipping Board?

A. Yes, sir; that money was appropriated by Congress to the United States Shipping Board for the use of the United States Shipping Board Emergency Fleet Corporation.

Q. And it would be out of that appropriation this award of compensation would be paid?

A. I feel quite sure it would be; yes, sir.

By Mr. Weaver:

Q. But it would be Shipping Board funds, United States Shipping Board Emergency Fleet Corporation funds, when it was paid, would it not?

A. I don't quite understand.

Q. It would not be the funds of the Government, it would be the funds turned over by Congress to the Shipping Board to use for the purpose of paying for this land?

Mr. Jacobsen: I object to the part of the question it would be funds of the Government.

63 The Court: I understand from him the money should come out of the appropriation made for the use of the Emergency Fleet Board.

The Witness: Through the Shipping Board, yes, sir.

Redirect examination.

By Mr. Pearse:

Q. In other words, the money which would pay for the requisitioning of this land would not be out of any earnings which the United States Shipping Board Emergency Fleet Corporation might make from the operation of ships?

A. I don't believe that it would be.

The Court: They have not made any money out of it, have they?

The Witness: No, sir; not recently.

Mr. Pearse: Now, if your Honor please, I will ask for a continuance until tomorrow morning.

The Court: There is another feature I want you to keep in mind; there is only one piece of testimony upon the question of damages. I suppose the defendants are not going to dispute that.

Mr. Jacobsen: We had it entirely in mind what the testimony was upon the nature of damages.

The Court: I say in this case there is only one piece of testimony, and that if you are going to dispute that you ought to arrange for that, otherwise I advise you to take a special verdict that would be the amount of damages to be awarded.

Mr. Pearse: If I understand the law correctly, if your Honor please, that would be a question for the jury to determine whether or not that figure which was placed on the rental value by Mr.
64 Baker is the fair rental value. The jury passes on that.

The Court: The jury only passes upon the evidence as brought before it.

Mr. Pearse: The evidence before it would be the value of the property as fixed by the requisition, namely, nineteen thousand and some odd dollars.

The Court: No.

Mr. Pearse: And there is also another fact that there were no buildings on the property.

The Court: That is what I am bringing to your attention; I don't see how this jury could accept any other figures than those testified to by Mr. Baker upon the value of the profits, that is the damages for mean profits for the deprivation of the use of the property. As I say, you ought to prepare yourself one way or the other on that. You are asking the jury to disbelieve Mr. Baker and in all probability they wouldn't do it.

Mr. Jacobsen: There is also a question of law involved in that. I didn't know your Honor was going to anticipate any motion along that line. I respectfully submit the question of what the income from this property might have been, had this plaintiff used it for some purpose he didn't intend to use it for, is not competent at all.

The Court: You may argue that before the jury or Court if you like to, if there has been any damage that can be awarded by this jury. I am pointing out there is only one piece of testimony and that was given by Mr. Baker.

Mr. Jacobsen: We understand that thoroughly.

The Court: All right. Of course my present view may not be the one I will carry out but it looks to me now as if the sensible
65 thing to do would be to take the jury's judgment upon the question of damages, subject to the ruling of the Court whether in law the plaintiff is entitled to a verdict so that when I do rule upon that, the Court of Appeals may affirm the judgment based on the verdict or if I should conclude there was not any right of action, sustain my determination to that effect; in other words, I want to bring this case to an end.

Mr. Pearse: I feel that is a very satisfactory way to leave it and I am sorry we cannot conclude this afternoon.

The Court: You will be ready in the morning?

Mr. Pearse: Yes, sir; I will use our best efforts to get witnesses here.

The Court: I am wondering whether you have anything to lose by making that concession.

Mr. Scott: The argument seems to be made under clause F——

Mr. Jacobsen: No, under subdivision A we had a right to take it; under B our uses of it were prescribed, and further under subdivision F of the Act of May 22d we were given certain other powers.

The Court: Without going into too fine distinctions, they contend that under one subdivision they had a right to take this property as long as it was suitable for the purposes mentioned in the subdivision.

Mr. Scott: If the counsel will state fully exactly what was done we will admit witnesses would have testified so.

The Court: I think that is a sensible course to pursue.

Mr. Scott: I want a full statement.

The Court: They can do it, I suppose.

66 Mr. Jacobsen: Yes. I will tell you frankly, I am a lawyer with the Fleet Corporation. I am not in charge of their operations. I will say to the Court what was done was this, the land was taken, money was furnished for the purpose of building the tracks on the land, and a contract was then entered into with the Public Service Corporation to furnish power and to operate its cars over that track which we had built on this land, and to make the connecting switch, that is exactly what happened.

The Court: Of course it is not necessary to go into details as to the amount paid. You can allow that to go in, to be testified to by witnesses in the morning.

Mr. Scott: Yes.

The Court: As I understand it, it is clearly stated—I was wondering whether I got the right inference—that land was taken and a contract was made between this defendant, the Fleet Corporation, and some contracting concern to construct the railroad, that is the loop on the land, and another contract was made with the Railway Company to furnish power to operate its cars over that loop.

Mr. Jacobsen: That is substantially it, except that I don't want your honor to have the impression that we got some outside contractor to build the tracks. I don't know who the contractor was.

The Court: You got the man to build the tracks?

Mr. Jacobsen: Yes, we built the tracks within the property.

The Court: And paid for it?

Mr. Jacobsen: And paid for it. The connection we contracted with the Public Service Corporation to furnish, and the power we contracted also.

67 The Court: I think it is perfectly well understood. That raises the question, I think, clearly whether or not a proper interpretation of these several subdivisions here justifies that course on the part of this defendant.

Mr. Jacobsen: If your Honor please, Mr. Pearse has just suggested

in order to clarify the record that that act of ours was done subsequent to the 18th of June, 1918.

Mr. Pearse: Which was the day the executive order was made.

Mr. Jacobsen: Which is in evidence. Of course it was subsequent to the requisition.

Mr. Pearse: The requisition was in May.

The Court: You May show that, of course. That was a delegated power.

Mr. Jacobsen: Yes.

The Court: As far as I am concerned, I am ready to dispose of the case today. Can you figure up just what that would be on the basis of Mr. Baker's testimony?

Mr. Weaver: $14,134.72.

The Court: Mr. Baker was testifying to so much per annum but there was a difference in each calendar year that he testified to.

Mr. Pearse: We want to renew our motion for a non-suit and then to go into the question of the relevancy of this testimony with respect to the value, the rental value.

The Court: All legal questions are still open. Questions of fact now are closed, and I understand there is practically no dispute on the facts.

Mr. Jacobsen: We renew our motion at this time to dismiss on all the grounds stated before. The action is improperly laid against the Emergency Fleet Corporation. Under the statute the
68 only remedy which the plaintiff has is an action against the United States for the difference between seventy-five per cent. of the award and the amount which the plaintiff believes to have been due it as just compensation. Upon the further ground that under the Act of March 1, 1918, the powers exercised by the Emergency Fleet Corporation were powers directly delegated to it by the United States Government, and that it acted in this capacity as the direct agent of the United States Government and that the action can only be maintained against the United States.

We move to dismiss on the further ground that the plaintiff has failed to establish any loss of mean profits, that whatever profits this plaintiff claims it was deprived of by reason of this occupation of the land under the requisition can only be recovered as a part of the just compensation to be awarded to it under the statute, and that no claim for mean profits as such arising out of the taking of this property are at all chargeable since the plaintiff was divested of its title to the property immediately upon the requisitioning of it, in accordance with the provisions of law.

I move to dismiss upon the further ground that the profits attempted to be shown by the witness on behalf of the plaintiff for rent which could have accrued to the plaintiff during the years 1918, 1919, 1920 and 1921 is entirely incompetent and irrelevant and not properly laid. The witness testifies that he based his calculations upon what similar property in the neighborhood brought or would bring for ground rental if the land had been improved.

There is no testimony whatever before the Court, we submit respectfully, as to any profits at all which would have been

69 derived from this property nor is there any proof that at the time of the taking of the property it was to any extent whatever a source of income to the plaintiff.

The Court: Have you any motions to make?

Mr. Weaver: I move, if your Honor please, that a verdict be directed in favor of the plaintiff to the end that the defendants be found guilty of the trespass laid to their charge and that a verdict be entered in the sum of $14,134.72 for mean profits and damages on the ground that the Emergency Fleet Corporation had no power under the Act of Congress to requisition this land for the purpose for which it was taken, and that the Shipping Board, having taken this land, the United States Shipping Board Emergency Fleet Corporation having taken this land that it was subject to suit in this court, and for that reason the motion I have made should be decided in our favor.

The Court: All right, gentlemen. I might say now I am going to submit to the jury the question of the damages——

Mr. Jacobsen: I respectfully except.

The Court: —for the purpose of determining what amount should be awarded on this evidence, in case this Court should hold subsequently that as a maatter of law the plaintiff was entitled to his action. Of course, that is a jury question. I cannot direct a verdict for the full amount that is claimed here and testified to by Mr. Baker, and on that question of course counsel for both parties are entitled to argue before the jury.

Mr. Pearse: I think we ought to argue to the jury on that question.

Mr. Jacobsen: We are entitled to a ruling as to my motion.

70 The Court: At the present moment I am going to overrule your motion and you may take an exception. What I am going to submit to the jury is the question of fact as to the mesne profits or damages by reason of the taking of this property from them, and when they have determined that then I will determine whether that shall be the judgment of this Court.

Mr. Jacobsen: I want the record clear that we have an exception.

The Court: Oh, yes.

(Exception allowed.)

(Counsel on both sides thereupon summed up to the jury.)

CHARGE OF THE COURT.

Gentlemen of the Jury: There is but a single question that you are called upon to decide, and that is what amount, if any, of damages has been sustained by the owner of this property from the time it was taken from him until the present time.

It will perhaps be helpful, however, to go a little beyond the bare question you are called upon to answer in order that you may have a better and more intelligent understanding of just what we are

trying to accomplish at this time. In every action there are involved questions of law and questions of fact. Sometimes the questions of law predominate, sometimes the questions of fact predominate, and sometimes the questions of law are very, very simple, sometimes the questions of fact are very simple and the questions of law are very complicated.

In our system of jurisprudence the Court is called upon and must asume the responsibility of settling the questions of
71 law, and if the Court is in error upon review that error will be corrected. The Court has nothing to do with the determination of the question of fact except to present the questions to the jury, and then if it thinks it can be of any help to the jury it speaks to the jury upon the questions of fact and the landmarks that to the Court seem to be helpful in arriving at a just conclusion of fact.

This is a case where the greater number of questions are legal questions, and they may in the end, in my judgment, be controlling as to what shall be the judgment regardless of what may be the question of fact that I am submitting to you.

The Government during the war and for the purpose of making its fighting forces as efficient as it was possible and to direct that efficient force as rapidly as possible, under the powers given by Congress was given certain rights to seize property for certain purposes, and this Fleet Corporation—that is what I will call it, it has a longer name than that, but that will be sufficient for our purposes,—a governmental agency, was empowered to take property for certain purposes. This company in the alleged exercise of those powers seized the plaintiff's property, it requisitioned it, took it and then used it for certain purposes.

The Act under which that power was exercised or could be exercised provided a way of compensation to the owner, it provided that an award should be made of the just value of the property taken, and it further provides that in case the owner was dissatisfied with that award he could sue the United States in a particular manner to recover the difference between seventy-five per cent of the award made and what he alleged to be the just value of his property. I ought to have said the Act provided in case the owner was dissatisfied that the Government should pay him seventy-five
72 per cent of the award and then he would be permitted to sue the United States for the difference between that amount and what was the actual value. The plaintiff did not do that and he is not here suing for the difference, if there is to be any difference. In other words, he is not pursuing the remedy provided by the Act. What he is doing is, he comes into court and says this Fleet Corporation had no right to take his property and therefore "I demand that it shall be returned to me and I demand also that I be now reimbursed for the damages I have sustained by reason of the taking."

For present purposes I direct you to assume that the plaintiff's contention as to the lack of power in the defendant corporation is

true, that is to say, you are going to assume now for the purpose of carrying out your part of this investigation that the Government had no right to have this property, and I will deal with that question later. Then you are to determine what damages, if any, in the way of mean profits the Government's agency shall pay to this owner in addition to returning him the property, and so I say that brings us again to what I said to you at the outset was a simple proposition and was a question of damages.

Here is a lot on a corner of Morgan Street and Broadway,—the map will show you the exact location. It was an unimproved lot, one of those vacant lots that we find all over, which had never been put to use by the owner, but which the boys in the neighborhood and others made use of, as boys will, as we know, and that is the lot that was taken. So you see, gentlemen, at the beginning we are deprived of a criterion, a fixed criterion of the rental value of that property because it had never been rented. The owner derived no income from that property at that time, and up to that time the property was a burden to him because taxes are laid upon unimproved property as well as improved, so that instead of being
73 an income producing property it was really an expensive proposition, there were no assets, but it was a liability; however, it had a value and the question arises, of course, first there being no ascertained rental value such as we would have if there happened to be a house on it or a number of houses or a coal or lumber yard, or something of that kind, and for which rent was paid, then we would have a definite fixed criterion of rental value. We haven't got that in this case. However, as I say, it had a value. The only evidence upon the part of the plaintiff as to the rental value of this property is by a real estate expert, and who gives us his opinion as to what was the annual rental value of that property. Now, observe, gentlemen, at the outset that this is an expert's testimony and it is opinion testimony, it is not fact testimony, it is not like a man who can give you the rental value of the Broad Street Bank or the Mechanics Bank over across the way where there is a definite rent paid and those are facts, expert testimony is what we call opinion facts. There are men, of course, who are versed in real estate, and this particular real estate agent was acquainted and familiar with the neighborhood in which this lot was situate. He had had experience in either renting directly some vacant land or knowing what it was rented for in that particular locality—I don't mean immediate locality of this lot, but I think running between half a mile and a mile away, so that he bases the rental value of this property upon what he thinks would be its value, for he tells us that in his estimate of the rental value he first ascertains what is its actual value if it was transferred from the owner to somebody else, and then by allowing a reasonable return and adding to that the taxes and then he fixed what he calls the rental value and in the aggregate that amounts to $14,134.72. Of course, you
74 are not required to accept those figures as conclusive. You are to determine, of course, as far as you can upon the evi-

dence in this case as to whether in view of all the circumstances, part of which he has detailed as underlying his judgment, whether they furnish such a rational basis for that conclusion as to satisfy you that that is the amount that should be awarded as the damages. It is not a case, of course, gentlemen, of merely guessing, and it is not a matter of speculation, although, of course in it is the element of conjecture because I say it is expert testimony. First, what do you think of his basis for determining the value by referring to a couple of lots some distance away? Does that give you a fair criterion of what would be the rental to be derived from this property? You are to test first the basis for his judgment. We don't know what he called a reasonable return for that value any more than we know what the value was, so we still have even his judgment presented to us with considerable of opaqueness about it, not much light in it.

Of course, there were taxes that were chargeable, we don't even know the amount of those, but it had some value without doubt.

Now, the building up and developing of the immediate surroundings of that lot gave it a rental value which it never had before. The owner of it is entitled to that even though all of the development should have been borne by the Government itself. Let there be no mistake about that because we are dealing with the questions of its rental value upon the assumption it was improperly, illegally taken from it, and if it was he would be entitled to whatever increment might come in the way of availability for renting purposes, although it was produced by the very body who had taken his land from him.

I don't know as I can help you any more upon the ques-
75 tion I am submitting to you than what I have said, not alone but what counsel have said in advocating their several contentions. Give it your honest, conscientious judgment, give it such judgment upon the assumption that what you are awarding is what the court of last resort will sustain. Remember, that your judgment as to the rental value unless it should be aggrieviously wrong, cannot be interfered with.

You have an important duty to perform both to the Government and to this plaintiff, and I know the greater number of you well enough to know that with this slight admonition you will proceed and determine what would be the value of that as rental value, regardless of whether you or I conclude in the end whether it was properly taken or not. You are to start with the thought and idea that it was properly taken from them, and if so what do you say in addition to the land shall the plaintiff get as its rental value. With those instructions I am going to leave the case with you and you may retire.

You may take exceptions if you have any.

Juror No. 6: If your Honor please, there is one matter that is not clear in my mind, the Government has taken possession of this property through requisition, and I understand that if the party whom it was taken from were not satisfied that the Government would give seventy-five per cent. of the amount that they determine

and they can sue afterwards through certain proceedings for what they claim that they did not receive, or the value of it.

The Court: That is right.

Juror No. 6: The question in my mind is whether these people accepted the $19,000 or whether they accepted seventy-five per cent. of that.

The Court: No, they did not; they did not accept either, and they are here, as I tried to make clear, gentlemen, they are
76 here because they deny the power of th Government to take it at all. The question of the value of the land is not involved here. The question only is whether assuming it was illegally taken by the Corporation what should be allowed in addition to returning it. The other questions I will have to determine myself and I didn't want to mention them too much for fear it might confuse you.

(The bailiff was thereupon sworn.)

Juror No. 6: May I ask, one of the gentlemen asked a question whether there is any assessed valuation to this ground at the time the Government took it over.

The Court: Undoubtedly there was some assessed valuation for taxing purposes, but it is not in evidence.

Juror No. 6: Then we cannot consider it from that standpoint?

The Court: No, but you are to start out of course as a common sense proposition that it was land assessed for some amount.

(The jury retired.)

The Court: Of course, this jury has had a very limited question submitted to it and they are going to return some kind of a verdict and I have reached the conclusion of what I shall do on the questions of law regardless of what their exact verdict will be, and I may as well dispose of the legal questions now and not bring you back at a later date.

I realize, of course, gentlemen, that no man should be dogmatic in a matter of this kind, and I further realize, therefore, that the Court must settle the legal questions raised. Although it might appear to be a dogmatic ruling yet at the same time it has to be done, and I give you the best judgment that I can give you on the interpretation of these Acts, so that when the verdict is rendered, with my conclusions here given, whichever side may feel
77 aggrieved with the result can take it promptly to the court of review. I think I have it in such shape, gentlemen, that whatever the court of final resort may conclude the litigation is at an end, so far as this particular land is concerned, so far as this action for adjudication is concerned, and the damages.

In my judgment it is very clear that what was done in this case by the Fleet Corporation was done in time of war and in at least a supposed exercise of powers that had been directly bestowed upon it, and in addition that which had been delegated to it by the Executive of the Government. They requisitioned this land and they had an award made, and that award has not been paid, not because

of any default on the part of the Government, but because the plaintiff assumed that it was illegally taken. We are, therefore, not concerned here in this suit on the question of proper compensation, but simply whether there was legal power properly exercised that took this land from the ownership and possession of the plaintiff.

Now, the defendant Fleet Corporation was authorized expressly by the Act of 1918, March, 1, 1918, to do a number of things with property belonging to somebody else. They could purchase it, they could lease, they could requisition it, for certain purposes. It requisitioned this particular land. It is contended on behalf of the defendant Fleet Corporation that they exercised the power in this instance under subdivision A of that Act and that thereupon they made such use of it as was authorized by subdivision B, and also by subdivision F, which was incorporated into the Act by a later amendment. That I think is a succinct statement of what the Fleet Corporation contends.

The plaintiff's contention, however, is that none of these provisions of any one of these Acts authorized the requisition of
78 this land for the purpose that it was taken, and they contend inasmuch as the requisition was silent as to the particular purpose, that they looked to what was actually done with the land was subsequently, as conclusively indicative of the purpose for which it was taken, and they say that purpose was to hand it over to the other defendant, the Public Service Railway Company, to use in connection with its terminal. In other words, that the land was taken from this present plaintiff and given over to the use of the trolley company that it might run in on upon it, its cars, discharge passengers and take on other passengers, and that that was not a use and a purpose that was authorized by the Act. I think that is also a fair statement of what the plaintiff's contention is.

Now, to my mind, while the language does not expressly authorize the taking of land for the identical purposes to which it was subjected subsequent to the taking, that that makes no difference upon the question of the power if this land was suitable for the construction of houses for the use of employes then engaged in shipyards in which ships were being constructed for the United States, that under that power the Fleet Corporation had a right to requisition and take the property, and that being so if the subsequent use of it was of a kind that facilitated the main outstanding purpose of this war legislation, namely, to render more efficient the making and hurriedly putting into shape the fighting forces of the country, that it does not lie in the mouth of the owner of the property to criticise the use that has been made of it. I may be wrong as to that, but I want to put my statement down in such a way that the Court above will know exactly how I found it. In other words, gentlemen, if the land was suitable for the purposes just mentioned and that was a purpose for which the land could be requisitioned,
and that is certainly established by the evidence in this case,
79 that then this Fleet Corporation could take that land and then use it not for the exact purpose mentioned in this sub-

division A, but for any other purpose that is either mentioned expressly in the other subdivisions or which by proper inference would be embraced in such subdivisions.

Now, the evidence shows that when this land was taken they constructed at the expense of the Fleet Corporation a loop railway, I don't know about the sheds, and so on, but anyway they constructed thereon a railway connecting with this Public Service Corporation's railway, and also entered into a contract with the Public Service Railway Company to run its cars upon this track.

Now here was a great enterprise being developed, the purpose of which of course was to construct and send forth into the warships that could be made very useful as a part of the fighting forces that were then being constructed. That necessitated the employment of many men. Many of these may have been brought from a distance, at any rate, the bringing to the shipyards of employes and taking them away was an efficient arrangement for the carrying out of the main purpose of the Act, and it was to that use that this land was put.

Now, I think without being charged as legislating that these enactments authorized just what this Fleet Corporation did. They certainly cause to be extended a railway, a street railroad, which was in existence close by, the extension being over this land which they had taken, and that use to my mind is justified in the subdivision B which is found in the earlier enactment. It is one of the necessary or convenient facilities in connection with the houses erected upon the neighboring lots, not erected upon this land, and with that thought in mind I am constrained to hold that the action
80 of ejectment was not properly brought, that is to say, that inasmuch as the land was a taking for the purposes authorized the only remedy that the plaintiff had was to secure for himself or itself a proper compensation; in other words, he could not bring action to recover the land, so that the action of ejectment in my judgment is improper and therefore must be dismissed, or rather the judgment must be entered of no cause of action because the moment the Court finds that the action of ejectment is improper, that which the jury may find as the damages to be allowed of course falls with it.

You may take exceptions now. That means whatever the verdict is, as it was taken subject to the ruling of the Court on matters of law, of course the judgment entered must be no cause of action.

Mr. Weaver: We except to the failure of the Court to find a verdict of guilty in favor of the plaintiff on the ground that these lands were unlawfully taken or taken without any power on the part of the Shipping Board because it is unconstitutional to take land where a party has the power of eminent domain, to take land for one purpose and use it for another or turn it over to someone else who has not that power of eminent domain.

The Court: Yes.

Whereupon the plaintiff, by its counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly. John Rellstab, Judge.

The Court: Now, gentlemen, I imagine that the stenographic notes here will of course sufficiently indicate just what the purpose here is, so that whatever the judgment above may be there will
81 be a final determination. If I am wrong, then of course the plaintiff will be entitled to his writ or repossession and also a judgment for the amount that the jury may find. If they hold I am right in my judgment, that brings this case to an end. I want you, of course, if you find the record does not indicate that clearly to see that it does.

Mr. Pearse: If the Court then should reverse your Honor they would simply remand it to this Court on the record, not for a new trial, but to assess the damages in accordance with the verdict rendered by the jury.

The Court: On the mandate there will be a judgment entered by the plaintiff.

Mr. Weaver: That will be fixed so that we won't have to come back?

The Court: On the mandate you will. They can only correct.

[Title omitted.]

RULE FOR JUDGMENT.

[Filed January 10, 1920.]

This action having been tried before Judge John Rellstab, with a jury, in the presence of counsel of the respective parties, on the second day of November, 1921, and the Court having directed
82 a verdict in favor of the defendants, United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company, and against the plaintiff, Manufacturers' Land & Improvement Company, it is Ordered that judgment final be entered of no cause of action and the defendants' costs to be taxed. John Rellstab, Judge.

On motion of Wescott & Weaver, Attorneys for Plaintiff.

[Title omitted.]

RULE TO SHOW CAUSE.

[Filed January 17, 1922.]

The above cause of action having been heard and submitted to the Jury pending the determination of the Court as to whether or not there was any cause of action by the plaintiff against the defendants and the jury having returned a verdict of $1,500 in favor of the plaintiff for mesne profits, it is on this seventeenth day of

January, 1922, on motion of Frederic M. P. Pearse, Assistant United States Attorney,

83 Ordered, that the plaintiffs show cause before this Court, on Monday, the thirtieth day of January, 1922, at the Federal Building, in the City of Trenton, at the hour of 10.00 A. M., why the verdict of the jury should not be set aside as excessive and contrary to the weight of evidence, and it is

Further ordered that a copy of this rule which need not be certified be served upon the attorneys of the plaintiff within five days from the date hereof. John Rellstab, Judge.

It is hereby stipulated and agreed that the hearing on this rule be continued until thirty days after the determination of the cause by the Circuit Court of Appeals. Frederic M. P. Pearse, Assistant U. S. Attorney. Wescott & Weaver, Attorneys for Plaintiff.

[Title omitted.]

ASSIGNMENT OF ERRORS.

[Filed January 26, 1922.]

Comes now the plaintiff in error, Manufacturers' Land & Improvement Company, and files the following assignment of errors

84 upon which it will rely in its prosecution of the writ of error in the above case:

I.

The United States District Court for the District of New Jersey erred in directing a verdict in favor of the defendants, United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company, and against the plaintiff, Manufacturers' Land & Improvement Company.

II.

Said Court erred in ordering that final judgment be entered of no cause of action.

III.

Said Court erred in refusing to find a verdict of guilty against the defendants on the ground that the lands were unlawfully taken, and taken without any power on the part of the Shipping Board to take land for one purpose and use it for another and turn it over to someone else who has not the power of eminent domain.

Wherefore, the said Manufacturers' Land & Improvement Company, plaintiff in error, prays the judgment of the District Court of the United States for the District of New Jersey may be reversed, and that judgment be entered in favor of the plaintiff, and damages be assessed in accordance with the verdict rendered by the jury in said cause. Wescott & Weaver, Attorneys of Plaintiff in Error.

85 [Title omitted.]

PETITION FOR WRIT OF ERROR.

[Filed January 26, 1922.]

To the Honorable Judges of the United States District Court for the District of New Jersey:

Manufacturers' Land & Improvement Company, the plaintiff in the above cause, feeling itself aggrieved by the finding of the Court and the judgment entered thereon on the — day of January, nineteen hundred and twenty-two, comes, by Wescott & Weaver, its attorneys, and petitions the Court for an order allowing the said plaintiff to prosecute a writ of error in the United States Circuit Court of Appeals for the Third Circuit, under and according to the laws of the United States in that behalf made and provided; and also for an order fixing the amount of the security which the plaintiff shall give and furnish upon said writ of error, and that upon the giving of such security, all further proceedings in this Court be suspended and stayed until the determination of the said writ of error by the United States Circuit Court of Appeals for the Third District.

And your petitioner will ever pray, &c. Wescott & Weaver, Attorneys for Plaintiff.

86 [Title omitted.]

ORDER ALLOWING WRIT OF ERROR.

[Filed January 26, 1922.]

On the petition of Manufacturers' Land & Improvement Company, the above named plaintiff, praying for the allowance of a writ of error in the United States Circuit Court of Appeals for the Third Circuit, it appearing to the Court that the said plaintiff has filed its assignments of errors,

Ordered, That the said writ of error out of the United States Circuit Court of Appeals for the Third Circuit, from the final judgment heretofore entered in the above cause, be and the same is hereby allowed, and that a certified transcript of the record and all proceedings in this cause, duly authenticated, be forthwith sent to said Court.

And it is further ordered, That the bond on said writ of error be and the same is hereby fixed at the sum of Two Hundred and Fifty Dollars. John Rellstab, Judge. Dated January 26, 1922.

87 [Title omitted.]

BOND ON APPEAL.

[Filed January 26, 1922.]

Know all men by these presents, that Manufacturers' Land & Improvement Company, as principal, and Royal Indemnity Company, of 84 William Street, New York City, New York, as surety, are held and firmly bound unto the above named United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company in the sum of Two Hundred and Fifty Dollars, lawful money of the United States of America, to be paid to said United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company, for the payment of which well and truly to be made, said principal and surety bind themselves, jointly and severally, and each of their successors and assigns, firmly by these presents.

Sealed and dated the twentieth day of January, 1922.

Whereas, the above named manufacturers' Land & Improvement Company has prosecuted a writ of error to the United States
88 Circuit Court of Appeals for the Third Circuit to reverse the judgment rendered in the above entitled cause by a Judge of the District Court of the United States for the District of New Jersey.

Now, therefore, the condition of this obligation is such, That if the above named Manufacturers' Land & Improvement Company shall prosecute its said writ of error to effect and answer all damages and costs if it fail to make its appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

In witness whereof, the Manufacturers' Land and Improvement Company has caused these presents to be signed with its corporate name by its President and its corporate seal attached attested by its Secretary, this twentieth day of January, A. D. 1922. Manufacturers' Land and Improvement Company, by David S. B. Chew, President. Attest: Samuel B. Scott, Secretary. (Seal.) Royal Indemnity Company, by Geo. D. Weaver, Attorney-in-Fact. (Seal.) Witnesses: E. A. Sappington, at to principal. Horace M. Burton, as to principal. Jeannette Stout, Clara L. Malany, as to Surety.

Approved as to form and security. John Rellstab, Judge.

89

WRIT OF ERROR.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the District Court of the United States for the District of New Jersey. Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which was in the said District Court before

you, between Manufacturers' Land and Improvement Company, plaintiff and United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company, defendants, manifest error hath happened to the great damage of the said Manufacturers' Land and Improvement Company, plaintiff-in-error, as by its complaint appears; we being willing that the error if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf:

Do command you, That if judgment be therein given, then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Third Circuit, at the Court Rooms of said Court in the Post Office Building in he City of Philadelphia, together with this writ, so that you have the same at the said place before the said Court on the twenty-fourth day of February, next, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to
90 the laws and customs of the United States ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States this twenty-sixth day of of January, in the year of our Lord one thousand nine hundred and twenty-two. George T. Cranmer, Clerk, by Charles S. Chevrier, Deputy. (Seal.)

CITATION.

UNITED STATES OF AMERICA, *ss:*

To United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Third Circuit, at the City of Philadelphia, in the State of Pennsylvania, within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the District Court of the United States for the District of New Jersey, wherein Manufacturers' Land Improvement Company is plaintiff-in-error and you are defendants-in-error, to show cause, if any there be, why the judgment rendered against the said plaintiff-in-error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

91 & 92 Given under my hand, in the District of New Jersey, in the Third Circuit, this twenty-sixth day of January, in the year of our Lord one thousand nine hundred and twenty-two. John Rellstab, Judge.

Service admitted this seventh day of February, 1922. Elmer H. Geran, by Frederic M. P. Pearse, Attorneys for United States Shipping Board Emergency Fleet Corporation, and Frank Bergen, Attorney for Public Service Railway Company, defendants-in-error.

93 **EXHIBIT G-1.**

Notice of Requisition.

Know all men by these presents, that the United States Shipping Board Emergency Fleet Corporation under and by virtue of the power conferred upon and vested in it by the Congress of the United States by act entitled, "An Act to authorize and empower the United States Shipping Board Emergency Fleet Corporation to purchase, lease, requisition, or otherwise acquire, and to sell or otherwise dispose of improved or unimproved land, houses, buildings and for other purposes," approved March 1st, 1918, and for the uses and purposes therein expressed has requisitioned and does hereby requisition all that certain plot, piece or parcel of land, with all buildings and improvements and building materials thereon situate hereinafter more particularly described, together with all rights, rights of way, easements, benefits, privileges, appurtenances and hereditaments of every nature whatsoever appertaining or belonging to or enjoyed by it or to which it may be subject, and all and every estate, right, title and interest therein, whether in whole or in part, whether vested or contingent, whether in fee simple or for a lesser estate, whether in possession or by way of reversion or remainder, whether conditional or absolute, whether at law or in equity, to the end and intent that the United States Shipping Board Emergency Fleet Corporation shall be seized and possessed of an estate in fee simple in said land, free and clear of all incumbrances, restrictions and/or limitations theron. The land so requisitioned is situated in the City of Camden, County of Camden, in the State of New Jersey and is bounded and described as follows:

94 Being a parcel of land of approximately two and forty-six hundredths of an acre, the boundary line of which is described as follows: Beginning at the point of intersection of the easterly sideline of Broadway with the proposed southerly sideline of Morgan Street and extending thence as follows (1) along the said easterly sideline of Broadway south nine degrees forty-five minutes west a distance of two hundred and fifteen feet (215'); thence (2) south eighty degrees twenty-one minutes east a distance of five hundred feet (500') to a point in the westerly boundary line of the right of way of the Camden, Gloucester and Mt. Ephraim Railroad; thence (3) along the said westerly boundary line of the right of way of the Camden, Gloucester and Mt. Ephraim Railroad north nine degrees forty-five minutes east a distance of two hundred and fifteen feet (215') to the said proposed southerly sideline of Morgan Street; thence (4) along the said proposed southerly sideline of Morgan Street north eighty degrees twenty-one minutes west a distance of five hundred feet (500') to the point and place of beginning in the easterly sideline of Broadway and there ending.

In witness whereof, the United States Shipping Board Emergency Fleet Corporation has caused these presents to be signed by its As-

sistant General Manager and its corporate seal to be hereunto affixed and attested by its Secretary this 21st day of May, 1918, in duplicate. United States Shipping Board Emergency Fleet Corporation, by F. T. Bowles, Assistant General Manager. Attest: Lester Sisler, Secretary. [Seal.]

95 COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

Be it remembered that on the 27th day of May in the year of our Lord One Thousand Nine Hundred and Eighteen before me, the subscriber, Master in Chancery of the State of New Jersey, personally appeared Francis T. Bowles, Assistant General Manager of the United States Shipping Board Emergency Fleet Corporation, who I am satisfied is the Assistant General Manager of the Corporation mentioned in the within instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as the Assistant General Manager of the Corporation, and as the voluntary act and deed of the Corporation, for the uses and purposes therein expressed. David Armstrong, Master in Chancery in the State of New Jersey.

To whom it may concern:

Notice is hereby given that the undersigned is authorized by law to determine and make just compensation for the above described property to the person or persons entitled to receive the same and that such determination will be deferred for two weeks from the date hereof, during which time any person deeming himself so entitled may be heard in person or in writing with reference thereto at 135 So. Sixteenth Street, in the city of Philadelphia, Pa. United States Shipping Board Emergency Fleet Corporation. F. T. Bowles, Assistant General Manager.

96 By virtue of my office as Assistant General Manager of the United States Shipping Board Emergency Fleet Corporation and pursuant to the authority vested in or conferred upon me by its by-laws, the resolutions of its Board of Trustees, or otherwise, I do hereby appoint Joseph M. Creely to be the requisitioning officer of the United States Shipping Board Emergency Fleet Corporation, and as such the duly authorized representative of this corporation to make, carry out and perfect any and all requisitions, and to certify to his act or acts as such requisitioning officer in the manner prescribed by the Board of Trustees. F. T. Bowles, Assistant General Manager. Dated May 21st, 1918.

Certificate of Requisitioning Officer.

STATE OF NEW JERSEY,
County of Camden, ss:

This is to certify that on the 28th day of May, 1918, I, Joseph M. Creely, a duly authorized representative of the United States Ship-

ping Board Emergency Fleet Corporation, did enter upon and then and there requisition and take title to and possession of all those lots, pieces or parcels of land with all buildings and improvements and building materials situate thereon, more particularly described in notice or order of requisition, a duplicate original of which is hereto attached, together with all rights, appur-en/ances, easements, and hereditaments appertaining, attaching or belong- to or enjoyed by the same, in the name and as the act of the United States Shipping Board Emergency Fleet Corporation pursuant to the authority conferred upon the said United States Shipping Board Emergency Fleet Corporation by an act of Congress entitled "An Act To Au-
97 thorize and empower the United States Shipping Board Emergency Fleet Corporation to purchase, lease, requisition or otherwise acquire, and to sell or otherwise dispose of improved or unimproved land, houses, buildings and for other purposes approved March 1st, 1918;" that I did then and there securely affix, post and attach to and upon the said premises a true copy of the aforesaid notice or order of requisition; that I personally did deliver to and serve a copy of the aforesaid notice or order of requisition upon all those persons found in occupancy of the aforesaid premises, and claiming to have any estate, right, title, interest, right of occupancy lien, license, privilege, easement or other claim of any nature whatsoever in, to or upon the said premises; and further that I did then and there publicly announce and declare that I did requisition and take possession of the aforesaid premises in the name and as the act of the United States Shipping Board Emergency Fleet Corporation pursuant to the authority conferred upon it by law as aforesaid, and pursuant to the authority vested in me by said United States Shipping Board Emergency Fleet Corporation by my appointment as requisitioning officer to act as its representative for the acts and purposes aforesaid.

I do further certify that accompanying the aforesaid copy of notice or order of requisition, there was affixed to the premises a copy of a notice reading as follows:

To all whom it may concern:

Notice is hereby given that the undersigned is authorized by law to determine and make just compensation for the above described property to the person or persons entitled to receive the same and that such determination will be deferred for two weeks from the date
hereof, during which time any person deeming himself so
98 entitled may be heard in person or in writing with reference thereto at 136 South Sixteenth Street, in the city of Philadelphia, Pa. United States Shipping Board Emergency Fleet Corporation, by F. T. Bowles, Assistant General Manager.

In witness hereof, I have hereunto signed and executed this certificate in duplicate this 5th day of June, 1918. Joseph M. Creely, Requisitioning Officer, United States Shipping Board Emergency Fleet Corporation.

STATE OF NEW JERSEY,
County of Camden, ss:

Be it remembered that on June 5th, 1918, before me, a Master in Chancery of N. J. personally appeared Joseph M. Creely to me known and known to me to be the individual described in and who executed the foregoing certificate, and who being by me first duly sworn did depose and say that he had read the contents thereof, that the statements therein made were true to his knowledge, and in due form of law he did further acknowledge to me that he did execute the foregoing certificate as his voluntary act and deed for the purpose and uses therein expressed and desired the same might be recorded as such. Joseph M. Creely.

Sworn to and acknowledged before me this fifth day of June, 1918. Wm. S. Casselman, Master in Chancery of New Jersey.

99 STATE OF NEW JERSEY,
County of Camden, ss:

I, Chas. H. Kelly residing at Belleville, N. J., being over the age of twenty-one years, do hereby certify that I am well acquainted with Joseph M. Creely who executed the foregoing certificate; that I was present when the said Joseph M. Creely did enter upon the lands described in the notice or order of requisition attached to the annexed certificate; that I have read the annexed certificate of Joseph M. Creely and that the allegations therein contained are true to the best of my knowledge and belief; and that I have no interest or claim of any nature whatsoever in the premises requisitioned.

In Witness Whereof, I have signed and executed this certificate in duplicate this 28th day of May, 1918. Chas. H. Kelly.

STATE OF NEW JERSEY,
County of Camden, ss:

Be it remembered that on this 28th day of May, 1918, before me, a Master in Chancery of New Jersey personally appeared Chas. H. Kelly to *be* known and known to me to be the individual described in and who executed the foregoing certificate, and who being by me first duly sworn did depose and say that he had read the contents thereof, that the statements therein made were true to his knowledge, and he did further acknowledge to me that he did execute the foregoing certificate as his voluntary act and deed for the purposes and uses therein expressed.

Sworn to and acknowledged before me this 28th day of May, 1918. Walter S. Keown, Master in Chancery of N. J.

100 STATE OF NEW JERSEY,
County of Camden, ss:

I, E. N. Hammer, residing at E. Rutherford, N. J. being over the age of twenty-one years, do hereby certify that I am well acquainted with Joseph M. Creely who executed the foregoing certificate; that I

was present when the said Joseph M. Creely did enter upon the lands described in the notice or order of requisition attached to the annexed certificate; that I have read the annexed certificate of Joseph M. Creely, and that the allegations therein contained are true to the best of my knowledge and belief; and that I have no interest or claim of any nature whatsoever in the premises requisitioned.

In Witness Whereof, I have signed and executed this certificate in duplicate this 28th day of May, 1918. E. N. Hammer.

STATE OF NEW JERSEY,
County of Camden, ss:

Be it remembered that on this 28th day of May, 1918, before a Master in Chancery of N. J. personally appeared E. N. Hammer to me known and known to me to be the individual described in and who executed the foregoing certificate, and who being by me first duly sworn did depose and say that he had read the contents thereof, that the statements therein made were true to his knowledge, and he did further acknowledge to me that he did execute the foregoing certificate as his voluntary act and deed for the purposes and uses therein expressed.

Sworn to and acknowledged before me this 28th day of May, 1918. Walter S. Keown, Master in Chancery of N. J.

101 CITY OF WASHINGTON,
District of Columbia, ss:

I, Lester Sisler, Secretary of the United States Shipping Board Emergency Fleet Corporation, do hereby certify that by virtue of my office as Secretary of aforesaid, I am custodian of the minutes, records and seal of the aforesaid corporation; that I know Joseph M. Creely who executed the foregoing certificate, and know him to be the duly authorized representative of said corporation for the uses and purposes as in the foregoing certificate of said Joseph M. Creely expressed.

In Witness Whereof, I have hereunto signed these presents and affixed the seal of said corporation this thirteenth day of June A. D. 1918 in duplicate. Lester Sisler, Secretary United States Shipping Board Emergency Fleet Corporation. (Seal.)

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

Be it remembered that on this 13th day of June 1918, before me, a Notary Public, personally appeared Lester Sisler to me known and known to me to be the individual described in and who executed the foregoing certificate, and who being by me first duly sworn did depose and say that he had read the contents thereof, that the statements therein made were true to his knowledge, and he did further acknowledge to me that he did execute the foregoing certificate as his voluntary act and deed for the purposes and uses therein expressed.

102 Sworn to and acknowledged before me this 13th day of June 1918. Ervin Lyndall, Notary Public. (Seal.) Commission expires at end of next session of Senate.

In the Courts of Common Pleas of Philadelphia County.

Affidavit (*Notary.*)

34450.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

I, Henry F. Walton, Prothonotary of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do Certify, That Ervin Lyndall, Esquire, before whom the annexed affidavit was made, was at the time of so doing a Notary Public for the Commonwealth of Pennsylvania, residing in the County of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements, and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

103 In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 14th day of June in the year of our Lord one thousand nine hundred and Eighteen (1918). Henry F. Walton, Prothonotary. (Seal.)

Recorded July 1st, 1918, at 8 A. M., by Edward W. Delacroix, Register.

STATE OF NEW JERSEY,
County of Camden:

[Insignia of State of New Jersey.]

I, Joshua C. Haines, Register of Deeds and Mortgages for the County of Camden, do hereby certify, that the foregoing is a true copy of the record of the Notice of Requisition from United States Shipping Board Emergency Fleet Corp., to —— ——, as the same is of record in my office in Book 4 of Misc. Records, page 543, etc.

In testimony whereof, I have hereunto set my hand and affixed my official seal at Camden, this Twenty-eighth day of October A. D. 1921. Joshua C. Haines, Register, by Ralston Sickler, Deputy Register. (Seal.)

104 **EXHIBIT G-2.**

United States Shipping Board Emergency Fleet Corporation,
140 North Broad Street,
Philadelphia, Pa.

November 15, 1919.

In the Matter of Requisition of a Parcel of Land on Broadway and Morgan Streets, in the City of Camden, State of New Jersey.

Determination of Just Compensation.

The undersigned, United States Shipping Board Emergency Fleet Corporation, a corporation duly organized and existing under the laws of the District of Columbia, having made requisition on the 28th day of May, 1918, of the fee simple of the following described premises: situate in the City of Camden, County of Camden, in the State of New Jersey, to wit:

Being a parcel of land of approximately two and forty-six hundredths of an acre, the boundary line of which is described as follows: Begining at the point of intersection of the easterly sideline of Broadway with the proposed southerly sideline of Morgan Street and extending thence as follows (1) along the said easterly sideline of Broadway south nine degrees forty-five minutes west a distance of two hundred and fifteen feet (215′); thence (2) south eighty degrees twenty-one minutes east a distance of five hundred feet (500′) to a point in the westerly boundary line of the right of way of the Camden, Gloucester & Mt. Ephraim Railroad; thence (3) along the said westerly boundary line of the right of way of
the Camden, Gloucester & Mt. Ephraim Railroad north nine
105 degrees forty-five minutes east a distance of two hundred and fifteen feet (215′) to the said proposed southerly sideline of Morgan Street; thence (4) along the said proposed southerly sideline of Morgan Street North eighty degrees twenty-one minutes west a distance of five hundred feet (500′) to the point and place of beginning in the easterly sideline of Broadway, and there ending,

under and by virtue of the power and authority conferred upon it by act of Congress entitled "An Act To authorize and empower the United States Shipping Board Emergency Fleet Corporation to purchase, lease, requisition or otherwise acquire, and to sell or otherwise dispose of improved or unimproved land, houses, buildings and for other purposes" duly approved March 1, 1918, and pursuant to resolution of its Board of Trustees, and of its notice or order of requisition duly executed by F. T. Bowles its Assistant General Manager and under its corporate seal duly attested by Lester Sisler its Secretary, and it appearing that Joseph M. Creely having been duly

appointed a Requisitioning Officer to carry out and perfect such requisition by certificate of appointment dated the 21st day of May, 1918, did on the 28th day of May, 1918, enter upon the aforesaid premises and make requisition thereof and take title thereto and possession thereof for and in the name and as the act of the United States Shipping Board Emergency Fleet Corporation, all of which more fully appears by the certificate of the said Joseph M. Creely duy executed the 5th day of June, 1918, and by the certificate of Charles H. Kelly executed the 28th day of May, 1918, and the certificate of E. N. Hammer executed the 28th day of May, 1918, witnesses thereto; and this corporation having caused appraisals

106 to be made of the value of the property or estate so requisitioned by Raymond L. Warren and William P. Hallinger each of whom has made oath that he is a disinterested person, and this corporation having given due opportunity to anyone interested in the aforesaid premises to be heard in person or by attorney as to his claim or interest in the aforesaid premises, or to present such claim or claims in writing; and this corporation having considered all the facts and having duly deliberated thereon,

Now be it known that the undersigned United States Shipping Board Emergency Fleet Corporation has made and determined as and for just compensation for the estate and interest so requisitioned as aforesaid the sum of Nineteen thousand seven hundred forty-three Dollars and twenty cents ($19,743.20) lawful money of the United States of America.

In witness whereof the United States Shipping Board Emergency Fleet Corporation has caused these presents to be signed by J. L. Ackerson its Vice President and its corporate seal to be hereunto affixed and duly attested by A. W. Cooper its Assistant Secretary, this 15 day of November, 1919. United States Shipping Board Emergency Fleet Corporation, by J. L. Ackerson, Vice-President. Attest: A. W. Cooper, Asst. Secretary. (Seal.)

107 *Affidavit (Notary).*

41342. Form No. 26.

In the Courts of Common Pleas of Philadelphia County.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

I, Henry F. Walton, Prothonotary of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do Certify, That Lorna D. Rutter, Esquire, before whom the annexed affidavit was made, was at the time of so doing a Notary Public for the Commonwealth of Pennsylvania, residing in the County of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for land

tenements, and hereditaments to be recorded in the said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 6th day of February, in the year of our Lord one thousand nine hundred and twenty (1920). Henry F. Walton, Prothonotary, by Meredith Hanna, Dep. Prothonotary, Durante Absentia, Secundum Legem. (Seal.)

108 STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Be it remembered that, on this 15th day of November, in the year of our Lord One thousand nine hundred and nineteen (1919), before me, a Notary Public, of the Commonwealth of Pennsylvania, residing in the City and County of Philadelphia, personally appeared the above named A. W. Cooper, who being by me duly sworn, on his oath saith that he is the Assistant Secretary of the United States Shipping Board Emergency Fleet Corporation, the corporation within named and that J. L. Ackerson is the Vice President; that the deponent knows the common or corporate seal of the said corporation and that the seal annexed to the within instrument is the said common or corporate seal of the said corporation affixed thereto in the presence of the deponent; that said instrument was signed, sealed and delivered as and for the voluntary act and deed of said corporation for the uses and purposes therein expressed, pursuant to resolution of the Board of Trustees of said corporation; and that the execution thereof this deponent subscribed his name thereto as witness. A. W. Cooper.

Sworn and subscribed the day and year aforesaid. Lorna D. Rutter, Notary Public. (Seal.) Commission expires April 1, 1923.

NOTE.—The form of acknowledgment and verification should conform in every instance to the requirements of the state where property requisitioned is located.

Approved as to form. Date, —— —, ——. Harry F. Hefing, Assistant Counsel.

109 Approved: M. Ball, Manager, Passenger Transportation & Housing Division.

(Endorsed: March 3rd, 1920. Received at Camden, N. J. at 2:30 P. M., and Recorded in Book No. 5 of Miscellaneous Records, page 89, etc., in Office of the Register of Deeds, &c., of Camden County. Edward W. Delacroix, Register.)

EXHIBIT G-3.

No. 9640.

United States of America,

[Insignia of Department of State.]

Department of State.

To all to whom these presents shall come, Greeting:

I certify That the document hereunto annexed is a true copy from the original in the archives of this Department.

[Executive Order—Signed June 18, 1918.]

In testimony whereof I, Bainbridge Colby, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this 17th day of April, 1920. Bainbridge Colby, Secretary of State, by Ben T. Davis, Chief Clerk. (Seal.)

110 *Executive Order.*

Delegating to the United States Shipping Board Emergency Fleet Corporation the powers granted to the President by the Act of Congress amendatory of the emergency shipping legislation, and approved April 22, 1918.

By virtue of authority vested in me by the Act of Congress, entitled "An Act to Amend the emergency shipping fund provisions of the Urgent Deficiency Appropriation Act, approved June fifteenth, nineteen hundred and seventeen, so as to empower the President and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes," approved April 22, 1918, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me by said Act. Woodrow Wilson. The White House, 18 June, 1918.

[No. 2888.]

EXHIBIT G-4.

No. 1548.

United States of America,

[Insignia of Department of State.]

Department of State.

To all to whom these presents shall come, Greeting:

I certify That the document hereunto annexed is a true copy from the original in the archives of this Department.

111 [Executive Order—Signed 3 December, 1918.]

In testimony whereof I, Bainbridge Colby, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this 17th day of September 1920. Bainbridge Colby, Secretary of State, by Ben. T. Davis, Chief Clerk. [Seal.]

Executive Order.

Delegating to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, powers granted to the President by acts of Congress relative to the Emergency Shipping Fund and approved on or prior to November 4, 1918.

Whereas, by Executive Order No. 2664, dated July 11, 1917, I delegated to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, certain powers vested in me under the section entitled "Emergency Shipping Fund" of the Urgent Deficiency Appropriation Act approved June 15, 1917; and

Whereas, since the issuance of said Executive Order, the said powers granted in said Act have been variously affected or extended by the section entitled "Emergency Shipping Fund" of the Urgent Deficiency Appropriation Act approved October 6, 1917, by Public Act No. 138—65th Congress approved April 22, 1918, amending said section of said Act of June 15, 1917, and by the sections en-
112 titled "Emergency Shipping Fund" in the Sundry Civil Appropriation Act approved July 1, 1918, and in the First Deficiency Appropriation Act, 1919, approved November 4, 1918, respectively,—

Now, therefore, by virtue of the authority vested in me by said laws, supplementing said Order No. 2664, but in no way limiting or restricting the effect thereof, or of acts heretofore done in pursuance thereof, I do hereby delegate all the power and authority so vested in me, and do direct that—

1. The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction; and

2. The United States Shipping Board shall have and exercise, subject to its discretion in turn to delegate such exercise as provided in said Executive Order No. 2664, all power and authority now vested in me by said laws with reference to constructed dry docks, marine railways and piers, and to constructed vessels or parts thereof or charters therein; to the operation, management and disposition of such dry docks, marine railways, piers and vessels; and to such other matters as are not herein mentioned.

3. All acts heretofore done by said Corporation or by said Board, with reference respectively to the kinds of power or authority herein

delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed. Woodrow Wilson, The White House, 3 December, 1918. [No. 3018.]

113 [Title omitted.]

And afterwards, to wit, on the fourth day of May, 1922, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable Victor B. Woolley and Honorable J. Warren Davis, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 28th day of September, 1922 come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

114 [Title omitted.]

OPINION.

[Filed Sept. 28, 1922.]

Before Buffington, Woolley, and Davis, Circuit Judges.

DAVIS, *Circuit Judge:* This writ of error was sued out to review a judgment of "No cause of action," entered on a verdict directed by the court, on an action in ejectment begun by the plaintiff in error in the New Jersey Supreme Court and removed by defendants to the District Court. The land in question was requisitioned and used under the authority of the Acts of Congress of March 1, 1918 and April 22, 1918 (40 Stat. 438, and 538). That Act authorized the United States Shipping Board Emergency Fleet Corporation, hereinafter called the Fleet Corporation, to purchase or requisition any land suitable for the construction thereon of houses for the use of employees of shipyards and their families; to determine and make just compensation therefor and if the amount determined was unsatisfactory to the person entitled to receive it, to pay seventy-five per centum thereof, whereupon the owner was entitled to sue the
115 United States for such further sum as he thought would be just compensation for the property taken. The Second Act amends the Emergency Shipping Fund Act of June 15, 1917 (40 Statute 182) by adding a new provision authorizing the President to take possession and control of any street railroad or interurban railroad and all appurtenances commonly used in connection with the operation thereof necessary for the transfer and transportation of employees of shipyards engaged in the construction of ships for the United States. The Act also contained the same provision for payment and suit against the United States as did the earlier Act and gave the President authority to exercise the powers conferred by the Act through the several departments of the Government and

through such agencies as he should determine from time to time. The power and authority vested in the President by the Act were conferred upon the Fleet Corporation by executive order dated June 18, 1918, twenty-one days after the requisition was issued and thirteen days before it was recorded.

Sometime after the executive order was issued the Fleet Corporation had a street railway track or loop constructed on the land in question and entered into a contract with the Public Service Railway Company to run its cars upon this loop for the purpose of transporting employees to the yards of the New York Shipbuilding Company, in which ships for the United States were being constructed.

The plaintiff contends that since the Fleet Corporation could requisition and condemn the land for one specific purpose only, the erection of houses thereon in which employees of shipyards could live, it could not thereafter by virtue of another act of Congress use it for the construction of a trolley track on which to carry employees of shipyards; that such use so soon after it was taken indicates that the land was originally taken for this purpose which was not included in the Housing Act and, therefore, the land was taken
116 without authority. "As it is clear," complainant says, "that the condemnation was for the purpose or the use to which the land was actually subjected, namely, trolley use, it is the position of the plaintiff-in-error that the whole proceeding was a nullity, since it was the taking of land from the very beginning for a use not authorized." The real question is whether or not the Fleet Corporation could on May 28, 1918 requisition land "suitable for the construction thereon of houses" under the Housing Act of March 1, 1918 and thereafter under the power and authority given to the President and delegated by him to the Fleet Corporation, by the Act of April 22, 1918, devote the land to a purpose other than that embraced in the Housing Act.

The Fleet Corporation filed a motion to dismiss the writ of error on the ground that the District Court was without jurisdiction because the New Jersey Supreme Court from which the cause was removed was without jurisdiction for the reason that the United States, which may not be sued without its consent, is the real party in interest and not the Fleet Corporation; that the United States has not given its consent to be sued in the State Court and consent is not conferred by removal. If this contention can be sustained, it is dispositive of the case and, it should, therefore, be considered before coming to the merits of the case.

The Acts under which the land in question was requisitioned, provide, as before stated, that in case the amount of compensation determined by the Fleet Corporation was unsatisfactory to the owner, he should be paid seventy-five per centum and thereafter be entitled to sue the United States, not the Fleet Corporation, for such further sum as would be just compensation for the property. The United States Attorney in his official capacity is defending the Fleet Corporation. All of the shares of stock of the Fleet Corporation but seven, four hundred ninety-nine thousand nine hundred ninety-

three, are held by the United States Shipping Board for the
117 United States and the seven are held by the seven directors of the Fleet Corporation to qualify them as directors and have never been paid for. It is evident that the United States is operating through the Fleet Corporation. Ward v. Foulkrod, 264 Fed. 627, 638. Therefore, the Fleet Corporation contends that it is only a nominal defendant and that the real defendant, though not named in the complaint, is the United States of America. Wells v. Roper, 246 U. S. 335. The suit being really against the United States, it cannot be sued except as provided in the Act under which the land was requisitioned, in the District Court of the United States or the Court of Claims.

When a statute creates a right and provides a remedy, that remedy is exclusive. Wilder Manufacturing Co. v. Corn Products Co., 236 U. S. 165, 174-175; United States v. Babcock, 250 U. S. 328, 331. The Act of March 1, 1918 created a right and provided a remedy which did not include the Supreme Court of New Jersey. Therefore, it was excluded and did not have jurisdiction if the United States is the real defendant. If the Supreme Court of New Jersey was without jurisdiction, the United States District Court did not acquire jurisdiction by removal, although it might in a like suit originally brought therein, have had jurisdiction. Courtney v. Pradt, 196 U. S. 89, 92; American Well Works v. Layne, 241 U. S. 257, 258; Lambert Run Coal Co. v. Baltimore and Ohio Railroad Co. — U. S. — (No. 153, October Term, 1921, decided April 10, 1922).

It is true that when such officer of the Government as the Postmaster General in his official capacity enters into a contract for the performance of Government work, the interests of the Government are so directly involved as to make the United States a necessary party and in effect the real party although not named in the bill. Wells v. Roper, supra. But the Fleet Corporation occupies a different position. The Act under which the corporation was organized was a war measure and provided that the corporation should be dissolved at the expiration of five years from the conclusion of the European War; that the stock was not to exceed $50,000,-
118 000,00 and the Fleet Corporation was authorized to purchase not less than a majority of such stock. This Act contemplated a corporation in which private persons might be stockholders and which was to be formed like any business corporation under the laws of the District of Columbia with capacity to sue and be sued. That all the stock was in fact owned by the United States Shipping Board for the United States except seven shares used to qualify persons as directors of the Fleet Corporation, does not affect the legal position of the corporation. United States v. Strang et al., 254 U. S. 491. The meaning of incorporation is that the corporate entity is a person and as such is subject to the general rules of law. If the powers delegated to the Fleet Corporation had been given to a single individual, he would not be less liable to be called upon to defend himself in courts than other grantees of power of eminent domain. An instrumentality of Government he might be, but be

cause he is agent and not the sovereign, he is answerable for his acts. If a tort be committed by an agent whose principal is above the law, because sovereign, and therefore exempt from judicial process, it would be subversive of the best established principles to say that the law could not afford the same remedies against the agent employed in doing the wrong which it would afford against him could he pricipal be joined with him. The immunity of the principal is not communicated to the agent. Osborn v. United States Bank, 22 U. S. 738, 842; United States v. Lee, 106 U. S. 196, 213, 221. The general rule is that any person within the jurisdiction is amenable to law. His only shield for harmful conduct is a constitutional rule of law exonerating him. The legal status of the Fleet Corporation relative to immunity from judicial process because of its practical identity with the Government has been directly passed upon by the Supreme Court which held that like any other person it could be sued. Sloan Shipyards Corporation et al. v. United States Shipping Board Emergency Fleet Corporation et al. (No. 308 October Term, 1921, decided May 1, 1922).

119 Having reached this conclusion it becomes necessary to consider the case upon its merits. The Housing Act of March 1, 1918 authorized and empowered the Fleet Corporation "to purchase, lease, requisition, including the requisition of the temporary use of, or acquire by condemnation or otherwise any * * * land or any interest therein suitable for the construction thereon of houses, for the use of employees and the families of employees of shipyards." The Act further provides that whenever the Fleet Corporation "shall acquire by requisition or condemnation such property or any interest therein, it shall determine and make just compensation therefor", with the provision for suit against the United States if the owner of the land is not satisfied with the compensation determined. This Act distinguishes between the requisition or condemnation of the land itself, and "any interest therein", including an easement. It will be seen that under the Act the Fleet Corporation was authorized and empowered to requisition or condemn either the land itself, taking the fee absolutly and for all time, or "any interest therein", such as an easement, for "temporary use" only. The determination of this case in our opinion depends upon whether the Fleet Corporation requisitioned the land itself or only an easement in the land. Unfortunately the record in the case does not contain a copy of the requisition and so we do not know the exact language employed in it. The defendant in its answer, however, alleges that on May 28, 1919 it "requisitioned a lot of land theretofore belonging to the plaintiff" and then particularly described the land in question, and further stated that: "Said requisition was in writing duly acknowledged and was on July 1, 1918, recorded at Camden in Book M-4 of Miscellaneous Records, Page 543, et cetera, in the office of the Register of Deeds, Camden County."

With regard to the determination of compensation it alleges: "In the matter of the requisition of the aforesaid lot of land, this de-

fendant on November 15, 1919, made and determined as and for just compensation for the estate and interest of the plaintiff so requisitioned as aforesaid, the sum of $19,743.20, lawful money of
120 the United States of America, which determination of Just compensation was embodied in a written instrument duly acknowledged, which instrument was on March 3, 1920, recorded in Book M-5 of Miscellaneous Records, page 89, et cetera, in the office of the Register of Deeds of Camden County."

It does appear then according to this last allegation, that "the estate and interest" of the plaintiff, the fee of the land, was requisitioned. The complainant filed a reply, but nowhere traversed the allegation that the Fleet Corporation requisitioned the land itself and thereafter determined just compensation for the same, including all "the estate and interest of the plaintiff" therein. That the land itself was requisitioned and not simply an easement therein is the theory upon which the case was tried below and agued in this court. In its brief the complainant says; "this land was requisitioned under what is known as the Housing Law"; that "the President of the United States did not delegate this power to the Fleet Corporation until a date subsequent to the requisition of the land, so that at the time the land was requisitioned," etc.; that the Fleet Corporation when it took the land in question did not intend to use it for the purposes specified in the Act". So that it appears without denial that the Fleet Corporation purported to requisition the fee and not an interest only in the land. There are no sacramental words, exact or technical language, which must be used in a statutory power to take and hold lands in order to give a right to take lands in fee. Any language which makes its meaning clear is sufficient. Newton v. Perry, 163 Mass. 319, 321; Washington Cemetery v. Prospect Park etc. Co., 68 N. Y. 591. It is not claimed by anyone that the land was not suitable for the erection of houses thereon. The Fleet Corporation undertook to requisition and did requisition the land in accordance with the authority of the statute and, therefore, took the fee and not merely and easement therein. The land then belonged absolutely to the Fleet Corporation and, owning the fee, it could
121 thereafter use the land for any other purpose than the erection of houses thereon that seemed wise to it in executing the war plans and policies of the United States. If only an easement in the land had been acquired for a particular purpose and it was subject to that single servitude, for all other purposes it was still the land of the plaintiff company. Taylor v. New York and Long Branch Railroad Company, 38 N. J. L. 28, 31. New Jersey Zinc and Iron Company v. Morris Canal and Banking Company, 44 N. J. E. 398. But the fee, "the estate and interest of the plaintiff", having been acquired and just compensation therefor determined, the estate and interest of the plaintiff was at an end and the Fleet Corporation could then under the authority and power of the Act of April 2, 1918 construct a trolley track on the land and enter into a contract for its use in transporting employees of the New York Shipyard, in which ships for the United States were being built, to and from this

yard. It follows that the judgment of the District Court must be affirmed.

[Endorsement omitted.]

122 [Title omitted.]

DECREE.

[Filed Sept. 28, 1922.]

In Error to the District Court of the United States for the District of New Jersey.

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, September 28, 1922. J. Warren Davis, Circuit Judge.

[Endorsement omitted.]

123 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the District Court of the United States for the District of New Jersey, Greeting:

Whereas, lately in the District Court of the United States for the District of New Jersey, before you or some of you, in a cause between Manufacturers' Land & Improvement Company (plaintiff below) Plaintiff in Error, and United States Shipping Board, Emergency Fleet Corporation, and Public Service Railway Company (defendants below) Defendants in Error, a judgment was entered in the said District Court on the tenth day of January, 1922, which judgment is of record in the office of the Clerk of said District Court, to which reference is hereby made, and the same is hereby
124 expressly made a part hereof as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Third Circuit by virtue of a writ of error agreeably to the Act of Congress, in such case made and provided, more fully and at large appears.

125 And Whereas, in the term of March, in the year of our Lord one thousand nine hundred and twenty-two, the said cause came on to be heard before the said United States Circuit Court of Appeals on the said transcript of record and was argued by counsel:

On consideration hereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause

be, and the same is hereby affirmed, with costs; and that the said United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company, Defendants in Error, recover against the said Manufacturers' Land & Improvement Company, Plaintiff in Error, in the sum of twenty dollars ($20) for their costs herein expended, and have execution therefor;

Philadelphia, September 28, 1922.

126 You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had the said writ of error notwithstanding.

Witness, the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, at Philadelphia, the thirtieth day of October, in the year of our Lord one thousand nine hundred and twenty-two (1922). Saunders Lewis, Jr., Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

Costs of U. S. Shipping Board et al.:

Clerk	$.....
Printing Record	.....
Attorney	20.00
	$20.00

[Endorsed:] Original File No. 2852. U. S. Circuit Court of Appeals, Third Circuit, March Term, 1922. No. 47. Manufacturers Land & Improvement Co., Plaintiff in Error, vs. U. S. Shipping Board, etc., et al., Defendants in Error. Copy of Mandate. Received & Filed Oct. 30, 1922. Saunders Lewis, Jr., Clerk.

127 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set:

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circu-t, do hereby Certify the foregoing to be a true and faithful copy of the original record and proceedings in this Court in the case of: Manufacturers Land & Improvement Co., Plaintiff in Error, vs. U. S. Shipping Board, etc., and Public Service Railway Co., Defendants in Error on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this twenty-third Day of December, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States the one hundred and forty-seventh. Saunders Lewis, Jr., Clerk of the U. S. Circuit Court of Appeals, Third Circuit. [Seal of United States Circuit Court of Appeals, Third Circuit.]

128 [Title omitted.]

ASSIGNMENT OF ERRORS.

Comes now, the plaintiff-in-error, Manufacturers' Land & Improvement Company, and files the following assignment of errors upon which it will rely in its prosecution of the writ of error in the above cause:

I.

The United States Circuit Court of Appeals for the Third Circuit affirmed the judgment of the United States District Court for the District of New Jersey.

II.

Said Court refused to reverse the judgment of the United States District Court for the District of New Jersey, directing a verdict in favor of the defendants-in-error, United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company, and against the plaintiff-in-error, Manufacturers' Land & Improvement Company.

III.

Said Court refused to reverse the judgment of the United States District Court for the District of New Jersey, ordering that final judgment be entered of no cause of action against the plaintiff below.

IV.

Said Court refused to reverse the action of the lower Court for its failure to find a verdict of guilty against the defendants below on the ground that the lands were unlawfully taken and
129 taken without any lawful authority on the part of the Shipping Board to take land for lawful purposes and immediately turn it over to another corporation.

V.

Said Court refused to reverse the lower Court when it appeared in the record that the Shipping Board evinced its purpose to take the land in question not for a purpose permitted by law, but to turn it over to another corporation.

Wherefore, the said Manufacturers' Land & Improvement Company, plaintiff-in-error, prays that the judgment of the United States Circuit Court of Appeals for the Third Circuit may be reversed and that judgment be entered in favor of the plaintiff-in-error, and that said Court be directed to order that a judgment be entered in favor

of the plaintiff-in-error by the United States District Court for the District of New Jersey. John W. Wescott, Francis D. Weaver, Attorneys of Plaintiff-in-Error.

[Endorsement omitted.]

130 [Title omitted.]

PETITION FOR WRIT OF ERROR.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes Manufacturers' Land & Improvement Company, the plaintiff-in-error in the above entitled cause, and plaintiff below, and says that on the 28th day of September, 1922, the United States Circuit Court of Appeals for the Third Circuit entered Judgment against the plaintiff-in-error affirming the finding of the United States District Court for the District of New Jersey in directing a verdict in favor of the United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company and against the plaintiff-in-error, in a suit in ejectment, and further says that the said judgment of the Circuit Court of Appeals and the proceedings had prior thereto contain certain errors which were committed by the Court to the prejudice of the plaintiff-in-error, all of which will more fully appear from the assignment of errors filed herewith.

Wherefore, the said plaintiff-in-error, Manufacturers' Land & Improvement Company, prays that a writ of error may issue in this behalf from the Supreme Court of the United States for the correction of the errors so complained of, under and according to the laws of the United States in that behalf made and provided; that the amount of the security which the plaintiff-in-error shall give and

131 furnish upon said writ of error may be fixed, that citation may be granted and that such judgment may be reviewed and reversed. John W. Wescott, Francis D. Weaver, Attorneys for Manufacturers' Land & Improvement Company.

[Endorsement omitted.]

132 [Title omitted.]

BOND ON APPEAL.

[Filed Dec. 21, 1922.]

Know all men by these presents that Manufacturers' Land & Improvement Company, a corporation, as principal, and Royal Indemnity Company, a corporation of the State of New of New York as surety, are held and firmly bound unto the United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company, in the sum of Two Hundred and Fifty Dollars, lawful money of the United States of America, to be paid to the said United

States Shipping Board Emergency Fleet Corporation and Public Service Railway Company, for the payment of which well and truly to be made, said principal and surety bind themselves, jointly and severally, and each of their successors and assigns, firmly by these presents.

Sealed and dated the 18th day of December, 1922.

Whereas, the above named Manufacturers' Land & Improvement Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the Judges of the United States Circuit Court of Appeals for the Third Circuit.

Now, therefore, the condition of this obligation is such, that if the above named Manufacturers' Land & Improvement Company shall prosecute its said writ of error to effect and answer all damages and costs, if it fail to make its appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force
133 and virtue. Manufacturers' Land & Improvement Company, by David S. B. Chew, President. Attest: Samuel B. Scott, Secretary. (Seal.) Royal Indemnity Company. George D. Weaver, Atty.-in-Fact. Witness *at* to Surety: Minturn T. Wright, Jr.

Approved. Louis D. Brandeis, Associate Justice of the Supreme Court of the United States.

[Endorsement omitted.]

134 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Because in the record and proceedings and also in the redition of the judgment of a plea which is in the said Circuit Court of Appeals before you, between Manufacturers' Land & Improvement Company, plaintiff-in-error, and United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company, defendants-in-error, manifest error hath happened to the great damage of the said Manufacturers' Land & Improvement Company, plaintiff-in-error, as by its complaint appears; we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things touching and concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 19th day of December, in the year of our Lord

one thousand nine hundred and twenty-two. Wm. R. Stansbury, Clerk of the Supreme Court of the United States. [Seal of the Supreme Court of the United States.]

Allowed by Louis D. Brandeis, Associate Justice of the Supreme Court of the United States.

[Endorsement omitted.]

135 UNITED STATES OF AMERICA, *ss:*

To United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the United States Circuit Court of Appeals for the Third Circuit, wherein Manufacturers' Land & Improvement Company is plaintiff-in-error, and you are defendants-in-error, to show cause, if any there be, why the judgment rendered against the said plaintiff-in-error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Louis D. Brandeis, Associate Justice of the Supreme Court of the United States, this 19th day of December, in the year of our Lord one thousand nine hundred and twenty-two. Louis D. Brandeis, Associate Justice of the Supreme Court of the United States.

Service admitted this 21st day of December, 1922. Wm. Y. C. Anderson, Attorney for United States Shipping Board Emergency Fleet Corporation, and Frank Bergen, Attorney for Public Service Railway Company, defendants-in-error.

[Endorsement omitted.]

Endorsed on cover: File No. 29,319. U. S. Circuit Court of Appeals, Third Circuit. Term No. 769. Manufacturers' Land & Improvement Company, plaintiff in error, vs. United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company. Filed December 29th, 1922. File No. 29,319.

NOV 22 19
WM. R. STAN
CL

UNITED STATES SUPREME COURT

October Term, 1923. No. 181.

MANUFACTURERS LAND & IMPROVEMENT COMPANY,
Plaintiff-in-Error,
v.
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION and PUBLIC SERVICE RAILWAY COMPANY,
Defendants-in-Error.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR MANUFACTURERS LAND & IMPROVEMENT COMPANY.

I. F. Huntsinger Co., Appellate Printers, Camden, N. J.

SUPREME COURT OF THE UNITED STATES.

October Term, 1923. No. 181.

MANUFACTURERS LAND & IMPROVEMENT COMPANY,
Plaintiff-in-Error,

v.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION and PUBLIC SERVICE RAILWAY COMPANY,
Defendants-in-Error.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR MANUFACTURERS LAND & IMPROVEMENT COMPANY.

STATEMENT OF CASE.

The facts are these. Plaintiff-in-error owned the land in question (Record, page 14). On May 28, 1918, this land was requisitioned under what is known as the housing law, passed March 1, 1918 (40 U. S. Stat. 438) (Record, pages 51, 52). The land in question was unimproved and unoccupied and

was not used for housing purposes and never has been used for such purpose (Record, pages 16, 17). Immediately after it was requisitioned the Emergency Fleet Corporation turned the land over to the Public Service Railway Company of New Jersey, which latter corporation has since then used the land for its own purposes (Record, pages 19, 37). The plaintiff-in-error brought ejectment in the Supreme Court of New Jersey against the defendants-in-error the twenty-sixth day of February, 1920. The defendants removed the cause from the Supreme Court of New Jersey into the United States District Court, for the District of New Jersey, at Trenton. The case was tried before Judge Rellstab. The learned trial Judge submitted the question of mesne profits to the jury in order that judgment might be entered on the mandate should the appellate court decide in favor of the plaintiff-in-error, but ordered a judgment of no cause of action, to which exception was taken (Record, page 45), and the case appealed to the Circuit Court of Appeals for the Third Circuit. The Circuit Court of Appeals affirmed the finding of the Court below (Record, page 66).

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred because it refused to reverse the judgment of the United States District Court, for the District of New Jersey, on the ground that said Court erred in directing a verdict in favor of the defendants, United States Shipping Board Emergency Fleet Corporation and Public Service Railway Company, and against the plaintiff, Manufacturers Land & Improvement Company, when said land was taken under cover of the Housing Act, but with the intent of using the land for a purpose not authorized by the said act, and when

the land was immediately used for the said unauthorized purpose.

BRIEF OF ARGUMENT.

THE POWER OF EMINENT DOMAIN IS IN DEROGATION OF INDIVIDUAL RIGHTS AND MUST BE STRICTLY CONSTRUED.

It is thoroughly established and supported by all the authorities that the power of eminent domain is in derogation of individual rights, is an attribute of sovereignty and, therefore, to be exercised with extreme caution and only for the service of some public interest. The power has always been surrounded with precautions and the greatest of these is the care of the Courts always to limit the power to the specific public purpose for which it is granted.

It should be kept clear in mind that while the power of eminent domain is an attribute of sovereignty of the state or nation, when it is exercised by a corporation that corporation is a mere agent of the sovereignty and has no powers whatsoever except those given to it, and the Courts maintain that, when a delegated authority to condemn is given, it must be construed strictly and held within the limits of the plain wording of the act or to some necessary implication therefrom. This is clearly explained by Judge Dillon in his well-known work on Municipal Corporations, Section 469, which is quoted with approval in the case of *Payne v. Kansas & A. V. R. Co.*, as follows:

> "Not only must the authority to municipal corporations or other delegated legislative agents to take private property be expressly

> conferred, and the use for which it is taken specified, but the power, with all constitutional and statutory limitations and directions for its exercise, must be strictly construed. Since the power to condemn private property against the will of the owner is a stringent and extraordinary one, based upon public necessity, or an urgent public policy, the rule requiring the power to be strictly construed, and the prescribed mode for its exercise strictly followed, is a just one, and should, within all reasonable limits, be inflexibly adhered to and applied."

The Court, in the case just mentioned, goes on to say:

> "The right of eminent domain is one which lies dormant in the state until legislative action is had pointing out the occasion, mode, conditions and agencies for its exercise. Dyckman v. City of New York, 5 N. Y. 434; Cooley, Const. Lim. 527; Allen v. Jones, 47 Ind. 438.
>
> "The Court in Water-Works Co. v. Burkhard, 41 Ind. 364, said: 'No property can be taken for public use by condemnation or otherwise than by legislative authority, and in the manner and for the purposes authorized.' These declarations of a legal principle are fully sustained by all the authorities on the subject."

It is stated in the elaborate work of Nichols on Eminent Domain, Second Edition, Volume 2, page 987, under the heading "Authority to Exercise Eminent Domain Construed Strictly."

> "One of the most firmly established principles of the law of eminent domain is that the burden is on a party seeking to exercise the power to show an express warrant from the legislature.

> The power of eminent domain will never pass by implication, and even when the power has been expressly granted, the grant will be construed strictly against the grantee and he will not be allowed to take the lands of another unless he comes clearly and unmistakable within the limits of his authority."

In support of this proposition, eighty cases are cited.

THE ACTS UPON WHICH DEFENDANTS RELY DID NOT GIVE THEM POWER TO REQUISITION LAND FOR THE PURPOSE FOR WHICH THEY INTENDED TO USE IT AND ACTUALLY DID USE IT.

The act under which the Emergency Fleet Corporation supports its seizure of the land of plaintiff-in-error is the Housing Act of March 1, 1918 (40 U. S. Stat. 438).

This law contains four paragraphs, marked A, B, C and D. The only paragraph which grants the power to requisition unimproved land is paragraph A, as follows:

> "To purchase, lease, requisition, including the requisition of the temporary use of, or acquire by condemnation or otherwise any improved or unimproved land or any interest therein suitable for the construction thereon of houses for the use of employees and the families of employees of shipyards in which ships are being constructed for the United States."

Paragraph B grants the power *to construct* on such land houses and other facilities, but gives no

power to condemn. Paragraph C gives the power to requisition or condemn, but confines its power to houses already erected, together with all necessary and proper fixtures and furnishings therefor, and all necessary and convenient facilities incidental thereto, with the further power to manage such fixtures and furnishings. As vacant land cannot be described as a facility incidental to a house, there is in this paragraph C no power to condemn land.

Paragraph D refers solely to the financing of the operations of the board, and therefore we find that the only possible legal excuse for taking plaintiff-in-error's land is found in paragraph A. It is clear that this paragraph gives the power to take land for a specific purpose, that of building houses in which shipyard employees might dwell, and the whole act is confined to that specific purpose. Nowhere in it is there any reference to transportation or anything else but housing.

In the trial of the case before the District Court the defendant cited paragraph F of the Emergency Shipping Act, approved April 22, 1918 (40 U. S. Stat. 535) (Record, pages 27, 28). This act could have no bearing because (a) the act gives no power to take land, but simply to take possession of street railroads, and because (b) the act is a grant of power to the President of the United States, which he did not delegate to the Emergency Fleet Corporation until a date subsequent to the taking of the land in question. It is the contention of the plaintiff that the taking of the land in question is void *ab initio* and cannot be rendered legal by legislation coming into effect at a time subsequent to the taking of the land.

THE PURPOSE FOR WHICH LAND IS TO BE USED IS AN ESSENTIAL ELEMENT OF THE POWER OF EMINENT DOMAIN.

Underlying the whole law of eminent domain is the principle that the use for which the condemned land is to be taken must be a public one. Innumerable cases might be cited to support this elementary proposition, but we content ourselves with one, because of the striking parallelisms with the case at bar.

> PENNSYLVANIA MUTUAL LIFE INSURANCE CO. v. PHILADELPHIA, 242 Pa. 47 (1913).

In this case, a statute of Pennsylvania gave power to cities to appropriate land for parkways, and also neighboring private property within two hundred feet of the boundary lines of such parkways in order to protect the same by the resale of such neighboring property with restrictions. The City of Philadelphia took certain land under this power, lying outside of the lines of the parkway, and adopted an ordinance providing for the resale of the property to the Bell Telephone Company, not the original owner, with certain restrictions as to the use of the land. The Court held that the act authorizing the taking of this land for this purpose was unconstitutional as the use was not a public one.

It is to be noted that in the case cited the sale was to a public utility corporation, the Bell Telephone Company, as in the case at bar, the turning over of plaintiff's land was to a public utility company, the Public Service Railway Company, yet that did not make the use a public one.

In another respect the case just cited is interesting, because the Supreme Court of Pennsylvania takes cognizance of the act of the City of Philadelphia, done after the act of taking, as evidence of the real purpose of the taking.

Page 52:

> "It (the answer) denies that the part of the plaintiff's property outside of the parkway was appropriated to sell to the telephone company, but admits that it was taken to secure the control of the property in order to protect the parkway as authorized by the Act of 1907. This denial must be read in connection with the ordinance of January 16, 1913, which became effective after the answer of the city was filed, authorizing the mayor to execute an agreement selling the property appropriated outside the parkway, including plaintiff's property, to the telephone company."

But it is not enough that the purpose be public, it must be expressed in the statute giving the power of eminent domain.

CITY OF PATTERSON v. MONTCLAIR WATER CO., 87 N. J. L. 533 (1915).

The Court says (p. 537):

> "It may condemn water and water rights for the purpose for which it was authorized to become incorporated, viz: for the purpose of supplying Montclair, and *for that purpose only.*"

ERIE RAILROAD CO. v. STEWARD, 170 N. Y. 172 (1902).

Page 178:

> "The Courts are to decide whether the uses for which the land is demanded, are, in fact,

public *and within the intendment of the statute.*"

MATTER OF THE SOUTH BEACH R. R. CO., 119 N. Y. 141 (1890).

Page 147:

"It follows that since the land sought to be condemned is not required for the purposes of the incorporation, but to enable these purposes to be substantially abandoned, the proceedings cannot be upheld."

N. Y. AND H. R. R. CO. v. KIP, 46 N. Y. 546 (1871).

Page 552:

"The purposes for which lands may rightfully be condemned to the uses of a railroad company are not necessarily confined to those needful for the track, but the legislature may confer the right to take lands compulsorily, for all needful purposes of the road and works proper and necessary to enable it to perform the public service authorized by its charter. *The extent of the power depends upon the terms of the grant.*"

RENSSELAER & SARATOGA R. R. v. DAVIS, 43 N. Y. 137 (1870).

Page 146:

"The construction of dwellings for employes or officers, and the construction of slips for the accommodation of vessels bringing freight to or taking it from the railroad company, are not, we think, upon the proofs before us, *necessary corporate purposes, within the statute.*

"The authority of the respondent to acquire by voluntary purchase lands for these purposes is within the powers granted by the act.

"In conclusion upon this branch, we say that it is not for the Court to deny or abridge the power of eminent domain. It is a prerogative power, necessary to the government and the welfare of its citizens. At the same time, it should not be allowed to be exerted by, or in behalf of individuals or corporations, except under the *express sanction and clear authority of law.*"

TRAMINGHAM WATER CO. v. OLD COLONY R. R., 176 Mass. 404 (1900).

Page 411:

"If a corporation is given the right to take either land or water by the right of eminent domain, it can take only what is reasonably necessary *for the purpose.*"

HIGHLAND BOY GOLD MINING CO. v. STRICKLEY, 116 Fed. 852, Circuit Court of Appeals, Eighth Circuit (1902).

Page 856:

"It is always an indispensable prerequisite of the right to exercise the power of eminent domain over the property of an owner of real estate to shew that it is necessary to use his property to carry on the business of the quasi public corporation which seeks it."

RAYSTOWN WATER POWER CO. v. BRUMBAUGH, 246 Pa. 225 (1914).

Page 228:

"A corporation clothed with the power to condemn land for railroad purposes, could not exercise that power to condemn land for mining or agriculture purposes * * *. A water company, or a water power company, *can con-*

demn land only for the purposes specified in the statutes, and cannot condemn more land even for these purposes than is reasonably necessary to conduct the business of the corporation."

WHEN A CORPORATION TAKES LAND UNDER THE POWER OF EMINENT DOMAIN OSTENSIBLY FOR A PURPOSE AUTHORIZED BY LAW, BUT WITH THE INTENT TO USE THE LAND FOR A PURPOSE NOT AUTHORIZED, IT IS A FRAUD ON THE LAND OWNER AND VOID *AB INITIO.*

The fleet corporation, when it took the land in question, did not intend to use it for the purposes specified in the act (Record, page 37). It was intended to turn the land over to the Public Service Corporation. It was turned over to the Public Service Corporation, and it has been used ever since by that corporation for its personal advantage. If it be granted that the Emergency Fleet Corporation could do whatever it pleased with the land, it is turning the power of condemnation into the right to take private property for any purpose whatsoever, which is contrary to the plainest reasoning, and the most obvious tenets of justice.

To say the very least, to put the property taken, immediately after taking it, into the possession and use of a trolley company involves the plainest intent to evade the mandate of the act itself. The act, under which the emergency fleet was proceeding, limited its power to take the land in question for the purpose of building houses thereon. Instead of building houses thereon, it immediately turned the property over to a trolley company. This was tan-

tamount to repealing the Act of Congress, which required the fleet corporation to take the land for the purpose of building houses thereon. To put it mildly, it was a fraud.

Whether the Emergency Fleet Corporation honestly intended to take the land to build houses thereon, or to take it for the purpose of turning it over to a trolley company, raises at once, either a question of fact to be submitted to the jury below, or a question of law to be disposed of by the Court.

The most ordinary mind would say at a glance that the Emergency Fleet Corporatoin was obliged to use the land for the purpose stated in the act, and that if it used it for a totally different purpose, it was not an honest transaction. Therefore, we hold that the Court below should either have submitted this fact to the jury, or should have disposed of the fact itself. Otherwise, as above stated, we are obliged by resistless reasoning to admit that the government, after taking private property for an express purpose, which purpose was a part of the power to take, could do whatever it pleased with the land after it took the same.

THE LOWER COURTS UNLAWFULLY HOLD THAT THE FEE HAVING BEEN ACQUIRED, THE LAND COULD BE SUBJECTED TO ANOTHER USE THAN PROVIDED BY THE ACT.

It must be borne in mind that Section A of the act empowers the fleet corporation to requisition any improved or unimproved land suitable for the construction thereon of houses for the use of employees and the families of employees of shipyards in which ships are being constructed for the United States; B, to construct on such land for the use

of such employees and their families houses and all other necessary or convenient facilities. Such is the phraseology of the act itself. It was contended that turning the land over to a trolley corporation was constituting "convenient facilities." To put such a construction on the language of the act is absurd. How can a trolley loop on the land in question be regarded, in any sense, as "convenient facilities"? The piece of land taken is comparatively small. If houses had been built upon it there would have been no room for the operation of a trolley terminal on the same ground; nor was it in the mind of Congress, when it used the phrase "convenient facilities," to contemplate the creation of trolley loops and sheds on the ground requisitioned. This is rendered entirely obvious, when it is considered that the power to take trolley lines arose from an act subsequently passed by Congress, under which act, indeed, it has been seriously contended by the government that it is justified in turning the land over to the trolley corporation.

The Emergency Fleet Corporation has endeavored to stretch the meaning of the words found in paragraph C "convenient facilities incidental thereto" into meaning transportation facilities. Not only is this unwarranted stretching of the words, but it should also be observed that paragraph C gives rights only to requisition things already in existence, including houses already built, land on which the same already are erected and "all necessary and convenient facilities thereto." It is an impossible use of language to treat a piece of bare land as a facility incidental to a distant house already built. Had the traction facilities been erected on the land at the time it was requisitioned there might be some meaning to the argument, but as the land was bare and unimproved at the time of taking, it

cannot be called a facility incidental to a housing operation.

The chief vice in the position taken by the District Court, was that it sought, by the combination of the two acts, to justify the government in its action and find a power which existed in either act.

A case exactly in point is that of Payne v. Kansas & A. V. R. Co., already cited. The United States Circuit Court of the Western District of Arkansas said, with perfect clearness, that this could not be done. In the case just cited, a railroad company had been given power to condemn for railroad purposes. Under this power it condemned certain land leading up to a stream for the purpose of building a bridge over the stream. Later it desired to enlarge the railroad bridge into a wagon and foot bridge, and by a later act was given corporate power so to do, but the later act gave no power to condemn land for the extension of the bridge. The railroad company entered upon the land necessary for the enlargement of the bridge on the assumption that the power of eminent domain given in the first act for railroad purposes was enlarged by the second act which gave them a new corporate power. In the second act, on which the government relies, there is no power of condemning land—simply the power of condemning trolley lines already in existence. The Court says:

> "In the Act of March 15, 1890, authorizing the building of a foot way and wagon part of a bridge, there is not a word on the subject of condemnation of private property to be used in the construction of the bridge. There is, therefore, in this act no express authority to condemn, nor can it arise by necessary implication. If there is no authority in either act to do this thing, we cannot create an authority

> by construing the two cases as laws *pari materia*. If the authority does not exist in either of the acts, we cannot find its existence by putting them together."

The cases are indistinguishable. The latter act, in the instant case, known as the Emergency Shipping Act, paragraph F, gives no authority whatsoever for the condemnation of land. It is confined to the condemnation of existing transportation facilities, and there were no such facilities on the land at the time it was condemned.

The president's proclamation was dated June 18, 1918 (Record, page 60). Our land was taken May 28, 1918 (Record, page 52). The learned trial Judge seems to have confused the power to condemn with the corporate power of the fleet corporation to deal with lands they may have gotten in some authorized way. The power to take is a totally different thing from the power to use, after the power to take has been exercised. The District Court confused the two conceptions. Indeed, the District Court is quite clear that the language of the Housing Act does not authorize the condemnation for any other purpose than housing purposes. He says, on page 44 of the record:

> "Now, to my mind, while the language does not expressly authorize the taking of land for identical purposes to which it was subjected subsequent to the taking, that makes no difference upon the question of the power if this land was suitable for the construction of houses for the use of employees then engaged in shipyards in which ships were being constructed for the United States."

Thus the District Court takes the position that

the power was not contained in the language of the act under which it was claimed. As it is clear that the condemnation was for the purpose or the use to which the land was actually subjected, namely, trolley use, it is the position of the plaintiff-in-error that the whole proceeding was a nullity, since it was the taking of land from the very beginning for a use not authorized.

The power conferred by the president, subsequent to the taking of the plaintiff-in-error's land can in no sense become retroactive and enlarge the powers of the fleet corporation.

The power conferred by the president did not enlarge the powers of the fleet corporation to condemn land.

We cannot too strongly emphasize the error into which the District Court fell, nor can we too strongly emphasize the error in the position taken by the Circuit Court of Appeals. The mistake of the District Court was in confusing two powers, utterly inconsistent with each other. The mistake of the Circuit Court of Appeals was the assumption that if the Emergency Fleet Corporation had the power to condemn for housing purposes, after exercising that power, they could use the land for any purpose they pleased. Our contention is that purpose is an essential part of the power to condemn. If the purpose intended is extracted from the power to condemn, it follows irresistibly that there is no power to condemn.

This is illustrated by the case of *Edgewood Railroad Company's Appeal*, 79 Pa. 257. In this case the corporation had been organized under the general railroad act of Pennsylvania, but as a matter of fact, it proceeded to construct a lateral road from a private coal mine to the Pennsylvania Railroad Company. The Court says, on page 271:

> "The charter of the defendants did not warrant the application they have made of the land of the plaintiffs for the purpose to which they have applied it. They are trespassers, as they would be if, under cover of their charter, they had entered on the land to build a turnpike or open a mine."

The Circuit Court of Appeals says, on page 65 of the record:

> "Unfortunately the record in this case does not contain a copy of the requisition and so we do not know the exact language employed in it."

The requisition was before the Court below and is found on pages 51 and 52 of the record. It takes a fee simple. The Circuit Court of Appeals falls into the same error as the trial Court in holding:

> "But the fee—having been acquired and just compensation therefor determined, the estate and interest of the plaintiff was at an end and that the fleet corporation could then, under the authority and power of the Act of April 22, 1918, construct a trolley track on the land and enter into a contract for its use in transporting employees to the New York Shipyard."

The case, in our judgment, is of great importance. To hold that private property may be taken under an alleged public necessity, and, *eo instanti*, used for any purpose whatsoever is to destroy the right of private property, on the one hand, and nationalize it, on the other hand. To acquire a fee to private property, under public necessity and instantly to use that fee for any purpose other than the purpose

which justified the taking is to destroy the right of private property.

The judgments below should be reversed.

Respectfully submitted,
JOHN W. WESCOTT,
SAMUEL B. SCOTT,
FRANCIS D. WEAVER,
Attorneys for Manufacturers Land & Improvement Company, Plaintiff-in-Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

MANUFACTURERS' LAND & IMPROVEMENT Company, plaintiff in error,
v.
UNITED STATES SHIPPING BOARD EMERGENCY Fleet Corporation and Public Service Railway Company.
No. 181.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR DEFENDANTS IN ERROR.

By this writ of error the plaintiff seeks review of a judgment of the United States Circuit Court of Appeals for the Third Circuit which affirmed a judgment of "no cause of action" rendered by the District Court of the United States for the District of New Jersey.

STATEMENT.

The action is one of ejectment and was begun in the Supreme Court of New Jersey by the service of summons and complaint upon the defendants on February 27, 1920 (p. 3). Upon petition of the defendants it was removed to the United States District Court. The defendants answered, the issues raised were tried, and the result was a judgment in

favor of the defendant upon a directed verdict. The controversy arose upon the following facts:

On May 28, 1918, the plaintiff owned a lot of land in the city of Camden consisting of about 2.46 acres which was, on that date, requisitioned by the United States Shipping Board Emergency Fleet Corporation under the authority of the Act of March 1, 1918, ch. 19, 40 Stat. 438, commonly known as the Housing Act. This act authorizes the Fleet Corporation to requisition any land suitable for the construction thereon of houses for the use of employees of shipyards and their families, and to determine and make just compensation therefor, and if the amount determined was unsatisfactory, to pay 75 per cent thereof, whereupon the owner was entitled to sue the United States for such further sum as would make just compensation, in the manner provided by section 24, paragraph 20, and section 145 of the Judicial Code. The Fleet Corporation fixed the compensation, pursuant to the statute (p. 57), but so far as appears from the record it was not accepted, nor has any suit been brought to secure it.

By the Act of April 22, 1918, ch. 62, 40 Stat. 535, the Emergency Shipping Fund Act of June 15, 1917, 40 Stat. 182, was amended by adding a new provision authorizing the President to take possession and control of any street railroad or any interurban railroad and all appurtenances commonly used in connection with the operation thereof necessary for the transfer and transportation of employees of shipyards engaged in the construction of ships for the

United States. The power and authority vested in the President by this Act were conferred upon the Fleet Corporation by executive order dated June 18, 1918, 21 days after the requisition was issued and 13 days before it was recorded (p. 63).

Some time after the executive order was issued the Fleet Corporation had a street railway track or loop constructed on the land in question, which connected with the tracks of the defendant Public Service Railway Company, and entered into a contract with that company to run its cars upon this track for the purpose of transporting employees between the yards of the New York Ship Building Company, in which ships for the United States were being constructed, and the houses which had been erected upon the neighboring lots. This is why the Public Service Railway Corporation was made a party defendant. It is merely a nominal defendant.

The contention of the plaintiff was, and is, that the Fleet Corporation could requisition land for one specific purpose only, the erection of houses thereon in which employees of shipyards could live, and that it could not thereafter use it for the construction of a trolley track on which to carry employees; that such use soon after the land was taken indicates that it was originally taken for that purpose, and that the land, therefore, was taken without authority. To maintain that contention the action was brought to eject the Fleet Corporation and the railway company from the land and to recover $20,000 for mesne profits and damages. The claim of the Fleet

Corporation is that they had a right under the act to requisition the land; that they did requisition it and obtained title and fee thereto; and that thereafter under the acts already cited and other acts they had a right to use it as they did. Both the District Court and the Circuit Court of Appeals had no difficulty in sustaining this contention.

THE STATUTES.

The United States Shipping Board Emergency Fleet Corporation was organized pursuant to Section 11 of the Act of September 7, 1916, ch. 451, 39 Stat. 728. Its purposes and its standing as an agency of the United States are too well understood by the court to need elaboration.

The Housing Act of March 1, 1918, ch. 19, 40 Stat. 438, authorized and empowered the Fleet Corporation—

> (a) To purchase, lease, requisition, including the requisition of the temporary use of, or acquire by condemnation or otherwise any improved or unimproved land or any interest therein suitable for the construction thereon of houses for the use of employees and the families of employees of shipyards in which ships are being constructed for the United States.
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> (b) To construct on such land for the use of such employees and their families, houses and all other necessary or convenient facilities, upon such conditions and at such price as may be determined by it, and to sell, lease, or ex-

change such houses, land, and facilities upon such terms and conditions as it may determine.

(c) To purchase, lease, requisition, including the requisition of the temporary use of, or acquire by condemnation or otherwise any houses or other buildings for the use of such employees and their families, together with the land on which the same are erected, or any interest therein, all necessary and proper fixtures and furnishings therefor, and all necessary and convenient facilities incidental thereto; to manage, repair, sell, lease, or exchange such lands, houses, buildings, fixtures, furnishings, and facilities upon such terms and conditions as it may determine to carry out the purposes of this Act.

By the Act of April 22, 1918, ch. 62, 40 Stat. 535, which amended the Act of June 15, 1917, the President was authorized—

(f) To take possession of, lease or assume control of, any street railroad, interurban railroad, or part thereof wherever operated, and all cars, appurtenances, and franchises or parts thereof commonly used in connection with the operation thereof necessary for the transfer and transportation of employees of shipyards or plants engaged or that may hereafter be engaged in the construction of ships or equipment therefor for the United States.

By executive order of June 18, 1918 (R. p. 60), the President delegated to the Fleet Corporation all power and authority vested in him by this Act.

The Emergency Shipping Act of June 15, 1917, was further amended by the Act of November 4, 1918, ch. 201, 40 Stat. 1020, 1022, so that section (f) read as follows:

> To take possession of, lease or assume control of, or to extend, improve, or increase, or cause to be extended, improved, or increased any street railroad, interurban railroad, or part thereof wherever operated, and all cars, appurtenances, and franchises or parts thereof commonly used in connection with the operation thereof necessary for the transfer and transportation of employees of shipyards or plants engaged or that may hereafter be engaged in the construction of ships or equipment therefor for the United States.

On December 3, 1918, by executive order (R. p. 61), the President delegated all power and authority vested in him by this act as amended and by other statutes to the Fleet Corporation, and also provided that

> All acts heretofore done by said Corporation or by said Board, with reference respectively to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

ARGUMENT.

I.

By its requisition order the Fleet Corporation acquired for the United States title in fee simple to the land in question.

The Housing Act of March 1, 1918, clearly gave the Fleet Corporation power—

(*a*) To requisition land or any interest in land suitable for the construction of houses for the use of their employees and their families;

(*b*) To construct on the land houses and "all other necessary or convenient facilities";

(*c*) To sell, lease, or exchange such houses, land, and facilities.

In this particular case the Fleet Corporation, under this law, requisitioned the fee of the land (Exhibit G–1, p. 51) "to the end and intent that the United States Shipping Board Emergency Fleet Corporation shall be seized and possessed of an estate in fee simple in said land, free and clear of all incumbrances, restrictions, and/or limitations thereon."

The land was unimproved and suitable for the erection of houses. There is no dispute about this. As soon as the requisition order was made title in fee simple passed to the Fleet Corporation as trustee for the United States. Having acquired a title in fee, the subsequent use which was made of the land is immaterial. Under the statutes quoted the Fleet Corporation had a right to construct upon it houses and all other "necessary or convenient facilities," or to sell, lease, or exchange it or the houses, lands,

and facilities, upon such terms and conditions as it might determine.

The statute clearly gave the Fleet Corporation the right to acquire the fee, not merely an easement for a special purpose, for the statute seems to contemplate that they might acquire land which, upon further consideration, they might determine was unsuitable for their purposes, for they were given authority to sell it, exchange it, or otherwise dispose of it. There is no force in the contention of the plaintiff in error that the fact that soon after acquiring the land they devoted it to railway purposes is conclusive proof that they never intended to use the land for the building of houses. It is not to be presumed that officials of the United States are acting fraudulently at any time, and no conceivable reason can be found to lead one to suspect that those officers were not acting in good faith when they took the land. On page 11 of the brief for plaintiff in error it is stated that "the fleet corporation, when it took the land in question, did not intend to use it for the purposes specified in the act (Record, page 37)." We find nothing on page 37 of the record, or elsewhere, which justifies such a conclusion.

The plaintiff is not concerned with the subsequent use to which the Government put the property. Its sole right is to just compensation, and no claim is made that the statute did not afford the plaintiff full opportunity to secure that compensation. The statute should not be construed in such way as to deprive the officers of the Fleet Corporation of the

right to exercise their own judgment with respect to the character of the land taken or of the use to which they put it, in the absence of clear evidence of fraud or bad faith.

II.

The use made of the land was authorized by law.

As a matter of fact, the land was used for the construction of a "necessary and convenient facility"; that is, a loop track connecting with a street railway in order to afford convenient transportation to and from their work of the shipyard employees who were engaged in building ships for the United States. Clearly this was a suitable and appropriate use, strictly within the governmental purpose and so determined by those authorized by law to make the determination.

Twenty-one days after the land was requisitioned the President issued the executive order of June 18, 1918, delegating to the Fleet Corporation the powers conferred by the Act of April 22, 1918. While this act did not, in specific language, authorize the construction of street railroads, it clearly expressed the intention of Congress to provide transportation facilities for shipyard employees in connection with the housing facilities to be constructed under the Act of March 1, 1918. Taken in connection with this act, it seems to be beyond argument that the Fleet Corporation was authorized to construct upon the land, the fee of which it had obtained by requisition, a trolley loop to connect with the tracks

of the public service railway company, for this loop was clearly a "necessary or convenient facility." At any rate it does not lie in the mouth of the plaintiff to say that it was not. Having obtained title in fee to the land, the purpose to which it should be devoted was a matter to be decided by the President or the officers to whom he had delegated authority. The sole right which the plaintiff had was to just compensation. Then came the Act of November 4, 1918, authorizing the President to "extend, improve, or increase, or cause to be extended, improved, or increased" any street railroad, etc. This statute, together with the executive order of December 3, 1918, conferring upon the Fleet Corporation the powers of the President under that act and expressly ratifying everything which the Fleet Corporation had theretofore done in the matter, would seem to place it beyond question that the use which the Fleet Corporation had made of this land was lawful, fitting, and proper.

Things were moving rapidly in May, 1918. It was the critical period of the war, and the use of every facility in the country for the speedy construction of ships was a supreme necessity. We doubt if any one would be rash enough to claim, if the Fleet Corporation had requisitioned a tract of land and built houses on some of it and used some of it for streets and roads, that the portion used for streets and roads was illegal and unauthorized and made the requisition void. Homes for the workers would not be completely useful if they were inaccessible.

Under the necessities of war one would be rash indeed who could say that there was anything in the country which could not be appropriated by the Government to help prosecute the war. When the Government was taking over ships and shipyards, mines and factories, and the entire railroad, telegraph, and telephone systems of the United States, it seems strange indeed to find the claim seriously advanced that these two acres of land were too sacred to be taken from their owner merely because, when taken, they were used not for houses but to supply access to other houses.

III.

The question of jurisdiction.

The suit was brought in the Supreme Court of New Jersey and removed to the United States District Court. If the State court was without jurisdiction, the United States Court did not acquire jurisdiction by removal, *Courtney* v. *Pradt*, 196 U. S. 89; *American Well Works* v. *Layne*, 241 U. S. 257; *Lambert Run Coal Company* v. *Baltimore & Ohio Railroad Company*, 258 U. S. 377, and if the action is in reality one against the United States, no court has jurisdiction, for the United States has not consented to be sued in ejectment.

Since the decision of the case of *Sloan Shipyards Corporation* v. *United States Shipping Board Emergency Fleet Corporation*, 258 U. S. 549, it may not, of course, be contended that the Fleet Corporation has any general immunity to suit. Without attempting to reargue anything that was decided by that case,

we think it proper to point out certain considerations which make it doubtful, at least, whether the Supreme Court of New Jersey had jurisdiction in this case. The opinion of the court in the *Sloan Shipyards case* considered the statute authorizing the incorporation of the Fleet Corporation and the subsequent statutes under which there were conferred upon it enormous powers arising out of the necessities of the war. The decision was, to some extent, based upon the original status of the Fleet Corporation, and in delivering the opinion of the court Mr. Justice Holmes, referring to these subsequently delegated powers, said:

> Whether the Fleet Corporation did or could rely upon this delegation in its alleged acts of December, 1917, or whether it purported to be acting under powers conferred upon it by the contract does not appear from the allegations of the bill.

The bill had been dismissed in the court below upon motion, and this court decided the case, to some extent, upon the question of pleading. In the dissenting opinion Mr. Chief Justice Taft said:

> The opinion of the court is carefully drawn and if its conclusion is to rest merely on the nice distinction that it does not clearly appear from a proper construction of the pleadings that the acts here complained of were acts done under authority delegated by the President to the Fleet Corporation, as his agent, then the question I have been discussing and which seems to me to be in these cases is not here decided, and will only arise on answer and evidence.

The case at bar seems to present clearly the status of the Fleet Corporation as the repository of the enormous powers conferred upon it directly by Congress or indirectly by executive orders of the President. The property involved, of course, is property of the United States. Whatever title the Fleet Corporation had was that of trustee for the United States. The powers granted by the Housing Act were granted solely in aid of the wartime powers granted the President by the Act of June 15, 1917, and by him delegated to the Fleet Corporation. This clearly appears from the act as a whole and particularly from the provision in paragraph (d) to the effect that whenever the Fleet Corporation should requisition or condemn any property the provisions of Section 355 of the Revised Statutes (providing that no public money shall be expended upon the land until the opinion of the Attorney General in favor of the validity of the title shall be had, nor until the consent of the legislature of the State in which the land is located has been given) should not apply. It also appears from the provision that the power granted shall cease with the termination of the war; the appropriation of $50,000,000 for the purposes of the act, and the provision that the Fleet Corporation shall not expend nor obligate the "United States" to expend more than that sum; and also from the provision that if the compensation fixed by the Fleet Corporation should not be accepted the owner should be entitled to sue not the Fleet Corporation but the "United States." Since the

passage of the Merchant Marine Act of 1920, 41 Stat. 990, all property acquired by the Fleet Corporation has been transferred to the Shipping Board.

This action was not brought to recover damages for breach of contract, as in the *Sloan Shipyards case*, but to oust this instrumentality of the Federal Government from the property which it had taken and used and was using for one of the purposes most vitally important in the prosecution of the war. The acts upon which the suit was based were not those growing out of the exercise of corporate powers acquired by incorporation under the laws of the District of Columbia, but were those exercised directly under grants from Congress and executive orders of the President. To be sure, when the action was brought, in February, 1920, the war emergency was over and liquidation was proceeding. But that fact does not alter the question of jurisdicition. If the action would lie at all, it could have been brought while the war was at its most critical stage. It seems hardly possible that Congress can be held to have consented to jurisdiction in the State court to oust its agent from property which, by its authority, it was using in prosecuting the war.

CONCLUSION.

The judgment should be affirmed.

JAMES M. BECK,
Solicitor General.
ALFRED A. WHEAT,
Special Assistant to the Attorney General.

DECEMBER, 1923.

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